
V. Bilateral Negotiations

A. Asia and the Pacific (Other than China & Japan)

Overview

The dramatic expansion of trade and economic growth in the Asia Pacific region over the past decade was due in large measure to the progressive and steady opening of markets in the region. While numerous barriers to trade in the region still exist, significant progress was made in the past decade in dismantling impediments to trade. The commitment of regional Leaders in the Asia Pacific Economic Cooperation forum to moving forward toward free and open regional trade and investment has been an important factor in spurring this regional trend (see Chapter IV for information on APEC). In addition, the Administration has delivered results in bilateral negotiations and consultations with countries in the region, opening markets of interest to American farmers, manufacturers, and services providers, and protecting intellectual property, which is critical to U.S. exporters in the high-tech, entertainment and other key sectors.

Highlights of the achievements of this Administration since 1993 include:

- ▶ *Effective Enforcement of Trade Commitments through WTO Dispute Settlement.* The United States has effectively used the WTO Dispute Settlement mechanism to ensure that countries in the region implemented their multilateral commitments. The United States prevailed in cases involving: discriminatory liquor taxes in Korea; automotive subsidies and barriers in Indonesia; prohibited export subsidies on automotive leather in Australia; exclusive

marketing rights in India for pharmaceutical and agricultural chemical products; and quantitative restrictions applied by India on a wide range of imported products.

The WTO Dispute Settlement process also facilitated settlements favorable to the United States in a dispute with Korea on shelf-life requirements for food products, with the Philippines on pork and poultry imports, and with Pakistan on exclusive marketing rights for pharmaceuticals and agricultural chemicals.

- ▶ *A Series of Significant Market Opening Agreements with Korea:* Through a combination of bilateral consultations, the use of U.S. trade remedy law, and action in the WTO, the United States has concluded agreements with Korea, and obtained commitments from its government: (1) in 1990 and 1993, to open its market for beef; (2) in 1995, to reform its government mandated shelf-life system, which had impeded the import of meat products; (3) in 1995, to address market access problems for trade in passenger cars; (4) in 1998, to further reduce trade barriers affecting passenger vehicles and to render trade in minivans and sport utility vehicles fairer; (5) between 1995 and 1998, to revise Korean import clearance procedures, thereby expediting the import of several key U.S. agricultural exports; (6) in 1998 and 1999, to take steps to privatize the second largest steel company in the world and to get the Korean Government “out of the steel business;” (7) in 1999, to reform its pharmaceutical pricing and regulatory

policies, thereby making the drug approval process in Korea faster and less onerous; and (8) in 1996, an agreement, and in 1997, a policy statement, to ensure equal treatment for foreign goods, services and intellectual property rights protection in telecommunications.

- ▶ *Normalization of Trade Relations with the Countries of Indochina.* As a result of the Vietnam era conflict, Cambodia, Laos and Vietnam were three of only seven countries in the world not to receive normal trade relations (NTR) status from the United States. In 1996, the United States completed a bilateral trade agreement with Cambodia granting it NTR status; in 1997, a comprehensive bilateral trade agreement and bilateral investment treaty were concluded with Laos (Congressional approval is still required to grant NTR under the terms of this agreement); and in 1999, the United States concluded a bilateral agreement in principle to grant NTR status to Vietnam, with provisions covering market access for goods and services, intellectual property and investment issues. The agreement requires final formal assent by the Vietnamese and Congressional approval.
- ▶ *Significant Progress in Protecting Intellectual Property Rights:* Bilateral consultations and negotiations with a number of countries in the region resulted in significant new commitments to protect intellectual property. These include: a bilateral agreement with the Philippines in 1993 under which it committed to modernize all of its IPR laws; an announcement by Thailand in 1994 of an intensive program to combat copyright piracy and conclusion of a comprehensive IPR action plan in 1997, both of which followed extensive consultations with USTR; an action plan by Korea in 1997 to

combat copyright piracy, improve patent enforcement and improve its trademark and industrial design laws, resulting from the "Special 301" process; and a bilateral agreement with Vietnam in 1997, which grants legal protection to all U.S. copyrighted works in that country for the first time.

- ▶ *Enhanced Access for U.S. Agriculture and Processed Food Exports.* The Administration has vigilantly utilized WTO procedures and bilateral consultations to reduce Asian restrictions which impede market opportunities for U.S. agriculture and food exporters. In addition to the agriculture-related WTO disputes mentioned elsewhere, resolution of India's balance of payments restrictions resulted in the elimination of quantitative restrictions affecting a broad range of agricultural and processed food products. In Southeast Asia, particularly during the recent economic turmoil and currency volatility, U.S. efforts concentrated on a host of measures which threatened U.S. agriculture exports, including: Philippine arbitrary customs valuation practices; Thai tariff adjustments and import licensing restrictions; Malaysian food standards and certification; and Indonesian tariff adjustments and monopolistic distribution channels.
- ▶ *Advancement of Worker Rights.* We have actively and creatively used our trade laws to obtain improvements in worker rights laws and practices in several Southeast Asian countries. In 1994, under a review of its Generalized System of Preferences (GSP) benefits, Indonesia agreed to a comprehensive action plan to improve its worker rights practices, including more freedom for unions; these commitments were expanded in succeeding years. In January 1999, a bilateral textile agreement with Cambodia contained incentives

aimed at promoting specific improvements in labor practices in this sector. In early 2000, after a multi-year effort by the United States taken under the GSP law, Thailand finally enacted a State Enterprise Labor Relations Act (SELRA), which restores internationally recognized worker rights to state enterprises.

- *Ensuring that Responses to the Financial Crisis are Market Opening:* USTR worked with Treasury and other agencies to ensure that International Financial Institutions (IFIs) stabilization programs adopted by countries hit by the financial crisis (including Korea, Indonesia and Thailand) worked to open markets and expand competition. Many aspects of these programs have a direct bearing on trade, in areas such as improved market access, transparency, economic deregulation, attracting investment efficiently, and allocating public and private resources based on market disciplines. The United States continues to monitor the trade-related aspects of these programs closely, to ensure their effective implementation.

1999 Activities

After experiencing a year of economic turbulence and decline in 1998, most countries in the Asia Pacific region showed clear signs of recovery in 1999. Each of the economies hardest hit by the financial crisis – Korea, Thailand, Philippines, Malaysia and Indonesia (though more tentatively) returned to overall positive growth rates in 1999. This was in part due to export growth brought about by the depreciation in exchange rates resulting from the crisis, as well as by implementation of economic reforms, particularly in the banking and financial sectors.

The rebound of U.S. goods exports to the Pacific Rim (excluding China and Japan) is another indicator that these countries have begun

recovering from the Asian financial crisis. U.S. goods exports increased 8.2 percent in 1999, after declining by 17.3 percent in 1998. Since 1992, U.S. goods exports have increased 48.9 percent.

In the area of trade policy, it is notable that notwithstanding the extreme pressures placed on some of the domestic economies in the region – unemployment and economic dislocation – governments in the region have affirmed their commitment to keeping their markets open, and after a year of decline, regional trade expanded in 1999. Existing WTO commitments by many countries in the region no doubt were a factor in this. In addition, the “peer pressure” of regular APEC meetings at the Ministerial and Leaders levels, and the desire to demonstrate continued commitment to the APEC vision of “free and open trade and investment” in the region helped to keep trade policies on course. Finally, the Administration’s vigorous program of consulting and negotiating bilaterally with countries in the region has worked to keep markets open and combat protectionist measures.

As the Asia Pacific region stages what will hopefully be a sustained recovery from the crisis, there is a need for vigilance in U.S. trade policy toward the region. First, though there has not been a marked protectionist trend in the region, it is clear that many governments are under pressure from groups adversely affected by the crisis to impose trade barriers to cushion adjustment problems. The United States, in addition to opposing any such measures because of the potential adverse affect on its commercial interests, strongly believes that any such retrenchment would be self-defeating. The fact that the region has not moved in a protectionist direction indicates that this view is broadly shared by others.

Second, it will be necessary to ensure that countries are implementing economic reforms in accordance with IMF stabilization packages. Reforms undertaken under these packages have had a direct bearing on the restored stability of

these economies. But moreover, many of the reforms are directly related to structural impediments – e.g., anti-competitive market or financial practices, lack of transparency in policy making – which have a direct bearing on the ability of U.S. firms and persons to sell and do business in these economies. The reforms are thus an important complement to the more direct market opening measures that occur in the context of bilateral negotiations, the WTO, APEC, and other trade fora.

The United States has a full agenda of specific bilateral impediments that it is tackling in the Asia Pacific region, as described below. It also continues to work regionally, primarily through APEC, to foster concrete movement toward more open markets, as described elsewhere in this report. Finally, it is committed to using the WTO process – both in enforcing existing commitments and in its future work program – to drive further open markets and expand trade in a region that accounts for over half of total U.S. exports.

1. Australia and New Zealand

Australia's market has begun to open for certain agricultural products that have been closed to U.S. exporters for, in some cases, 30 years. We have successfully persuaded Australia to open its market to a variety of fruits. We are currently in dispute with Australia over its ban on imports of Pacific salmon. The WTO validated the U.S. complaint in a case brought by Canada and, as the WTO dispute settlement process comes to a close, U.S. exporters will be able to access a market that has been closed for more than 20 years. The WTO SPS Agreement provided the lever to push for Australia to allow entry of U.S. agricultural products.

The United States continues to press Australia to comply with WTO rulings against Australia's use of export subsidies for automotive leather. The WTO found that Australia's subsidies violated its obligations under the WTO Agreement on Subsidies and Countervailing Measures and that

Australia had failed to comply with the Dispute Settlement Body's findings.

The United States and New Zealand have enjoyed a close working relationship in the international trade and investment arena, particularly in APEC and the WTO. We expect that this relationship will continue under New Zealand's new government. The United States and New Zealand have a Trade and Investment Framework Agreement which we utilized to seek greater, more transparent access to New Zealand's pharmaceuticals market.

Intellectual property rights protection is another area of great potential, particularly for the model New Zealand sets for others. In this regard, the just-elected New Zealand government has stated that it will return New Zealand to its previous policy of protecting copyrightable material from parallel imports for two years. We will continue to argue for a permanent return.

2. The Association of Southeast Asian Nations (ASEAN)

The trade and investment relationship between the United States and the members of the Association of Southeast Asian Nations is strong, mature, and mutually beneficial despite the continuing effects of the Asian financial crisis on Asian economies. In 1999, estimated two-way trade increased by 4.3 percent from \$113 billion to \$118 billion. Specifically, U.S. exports to ASEAN in 1999 increased by an estimated 1.4 percent from \$39.3 billion to \$39.9 billion. This modest, but positive, growth reflects the recoveries underway from the Asian financial crisis for a number of ASEAN economies. The now ten-member ASEAN group – comprising Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, and Vietnam – collectively continues to be the United States' fifth largest trading partner. As such, the United States has an important stake in ASEAN's economic recovery and is committed to working closely with ASEAN as an institution, and with ASEAN member countries individually,

to pursue and promote our mutual trade and investment interests.

The ASEAN countries have witnessed a number of important developments during the last few years. The economic turmoil which began in 1997 has caused significant economic dislocation, but was also the impetus for economic reform and restructuring that has promoted recovery and will benefit these countries in the future. The crisis has also fomented dialogue between the United States and ASEAN countries, as well as more regular discussion between ASEAN and its Asia neighbors such as China, Japan and Korea. In 1999, after a prolonged, stop-and-go process that centered on progress toward democratic reform, ASEAN admitted Cambodia as its tenth member, fulfilling the group's long-standing objective to create a ten-member regional institution by which to enhance political, economic, and social cooperation.

While ASEAN's gradual expansion over time has added to the Association's diversity, it has also posed new challenges which manifest themselves as more complicated decision-making and the lack of ASEAN solidarity in other fora, such as APEC and the WTO (in which some ASEAN members do not participate). Tensions have also surfaced in terms of individual member's difficulties and selective implementation of trade-related initiatives undertaken within ASEAN. In order to ensure that these intra-ASEAN undertakings do not adversely affect U.S. interests, it is important that such undertakings be consistent with WTO rules, be taken in the spirit of APEC's goals and principles, and be faithfully implemented if, ASEAN hopes to attain its own developmental goals and to promote a business- and investor-friendly environment.

In 1993, the then seven members of ASEAN created the ASEAN Free Trade Area (AFTA) as a means to promote regional economic competitiveness and prosperity. The objective of AFTA is to promote trade among ASEAN member countries by gradually reducing customs

duties on intra-ASEAN trade of qualifying products by 2005, with special allowance for sensitive sectors. By agreement, AFTA members agreed to accelerate the reduction of tariff cuts under AFTA from 2005 to 2003. Laos and Burma were admitted to ASEAN as full members in July 1997, although these countries have until 2008 to phase in obligations under the AFTA.

ASEAN continues efforts to implement and expand the AFTA by including unprocessed agricultural commodities in the tariff phase-out scheme, and placing greater emphasis on the elimination of non-tariff measures such as customs surcharges and technical barriers to trade. During the December 1998 ASEAN Summit in Hanoi, leaders agreed to accelerate reduction of AFTA Common Effective Preferential Tariff (CEPT) rates to ensure that a minimum 90 percent of tariff lines are subject to 0-5 percent rates by 2000 (3 years ahead of schedule). They also agreed to expand the scope of products for which CEPT rates will be eliminated by 2003 (which accounts for roughly 83 percent of AFTA tariff lines). In recognition of their late accession to the AFTA, Vietnam, Laos, and Burma will follow a modified schedule. However, specific details regarding how each ASEAN member will implement these objectives is yet to be worked out.

ASEAN also intends to expand negotiations under the Framework Agreement on Services beyond the current priority areas with a view to eventually including all sectors and all modes of supply. The Hanoi Summit also produced the "ASEAN Vision 2020" declaration in which members resolved, among other things, to continue with full implementation of AFTA, to implement fully the ASEAN Investment Area (AIA) by 2010, and to achieve the free flow of investment by 2020. The eventual creation of ASEAN patent and trademark offices are longer-term goals; however, efforts toward coordinating documentation and application filing procedures continue.

a. Indonesia

General

Due to the economic crisis and political upheaval in Indonesia for the past year, bilateral trade issues have not commanded the undivided attention of the Indonesian Government. Some observers believe that Indonesia's economy may be at its bottom, having completed 1998 with a GDP contraction of 13 percent and inflation of 58 percent, with concomitant unemployment and food price/distribution problems. While the Indonesian authorities have made some progress in implementing economic and political reforms needed to restore confidence, the economy appears to continue to lack the confidence and political certainty necessary for recovery. Indonesia's program with the IMF, initiated in October 1997, has been modified several times since then as the economic situation deteriorated. In 1998, 1999, and January 2000, the program was adjusted to allow for greater fiscal expenditures to help blunt the impact of the crisis on Indonesia's poorest and ensure their access to needed food, fuel, and medicine. There are continuing and serious problems in Indonesia's financial and corporate sectors.

i. Intellectual Property Rights

Despite some progress, Indonesia is on the USTR special 301 Priority Watch List for 1999 due to continuing problems raised by U.S. industry. These include software, book, video, VCD, drug, and apparel trademark piracy; audiovisual market access barriers; inconsistent enforcement and an ineffective legal system; and amendments to the copyright, patent and trademark laws that are not completely TRIPS consistent.

These issues had been raised with Indonesia in the past year, although the focus in Indonesia during that period has been primarily attaining economic and political stability. Because of this turmoil, USTR was able to present only in June 1998 an IPR work plan (market access, enhanced

enforcement, TRIPS consistency of laws, special juridical arrangements, legal use of software, and increased protection of well-known marks including several company-specific cases) with the proposal that if these changes are implemented, USTR would review the situation to see if a change in list status is warranted.

The Indonesian Government has yet to take sufficient action on the proposed work plan that would justify changing its status from "Priority Watch List" to "Watch List." Indonesia has acknowledged the need for improved enforcement and a broad education program, in addition to the need to bring its statutes into TRIPS conformity. During the coming year, USTR intends to make IPR a top priority in our bilateral trade relationship with the Wahid government.

ii. Worker Rights

As a result of Indonesia's insufficient progress in promoting worker rights, the U.S. Government denied in 1998 GSP benefits for seven Indonesian products valued at \$12.7 million and in 1997 for six items also with a small trade value. Indonesia passed a new labor law in September 1997 containing a number of positive elements, and in November 1997 USTR initiated a dialogue with Indonesia by means of an action plan to secure further progress. The action plan has benchmarks on worker rights focusing on freedom of association and the rights to organize and bargain collectively. Since its proposal, the U.S. Government received some useful responses from Indonesia but not enough worker rights progress to warrant granting the de minimis waivers during the May 1998 GSP review. Since then and during 1999, Indonesia appears to be following a constructive course in terms of adherence to core labor standards. The United States continues to monitor developments closely.

iii. IMF Trade-Related Conditionality

Indonesia's initial October 31, 1997
Memorandum of Economic and Financial Policy

(MEFP) with the IMF has been revised several times in response to deteriorating macroeconomic conditions. The latter versions of the program, including the most recent letter of intent executed in January 2000, expanded the focus of earlier programs to cover the entire range of economic challenges facing Indonesia. These include fiscal policy, monetary policy, structural reform and deregulation, corporate debt and bankruptcy proceedings, banking sector reform and restructuring, restoration of trade financing to promote exports, food security, the distribution system and social safety net policies. In accordance with the IMF program, the Indonesian authorities are taking initial steps to restructure the banking system and to facilitate the restructuring of corporate debt burdens.

The IMF memoranda contain a considerable amount of trade-related conditionality that if fully implemented by Indonesia will contribute to significant liberalization of the real economy and reduction of distortions in the Indonesian goods and services markets. Despite the sharp economic downturn in Indonesia, the Indonesian Government has undertaken structural reforms to dismantle the national car and aircraft programs, reduce tariffs on agricultural commodities and industrial goods, eliminate export taxes, and disband marketing monopolies. Indonesia appears to be implementing its border liberalization and internal market reforms captured in the IMF memoranda from October 1998 to date, although careful monitoring is warranted given the ambitious scope of liberalization involved and the relatively low level of commercial activity this year.

iv. Automobiles

By virtue of the successful challenge by the United States (in addition to the EU and Japan) of the WTO consistency of Indonesia's auto policies, Indonesia had to bring its auto policies into compliance with the panel ruling. The final report of the WTO dispute settlement panel examining Indonesia's auto programs constitutes a

significant victory for the United States in its effort to dismantle Indonesian barriers to trade in automotive products. It also serves as an important precedent in combating similar barriers in other markets. Since then, Indonesia has promulgated a new automobile policy that appears to comply with its WTO obligations. However, the United States is concerned by recent high-level statements by Indonesia officials that the government is considering reviving a national automotive industrial policy in some form. Such an action would be an inefficient commitment of resources at a time when materials, capital, and labor should be focused on promoting Indonesian recovery and promotion of sustainable enterprises. The United States will continue to monitor developments in this area closely.

b. Malaysia

Economic Climate

In reaction to the economic crisis, the Malaysian Government in September 1998 imposed an array of capital controls to insulate the Malaysian economy, including: restrictions on the convertibility of Malaysian currency (Ringgit) outside the Malaysian economy, a one-year freeze on the movement of portfolio investment out of Malaysia, limits on the amount of Ringgit which residents and foreigners may bring into or take out of Malaysia, central bank approval for various internal and foreign transfers, and the requirement that exports must be financed in foreign currency. These measures may have led to a reduction of foreign direct investment in Malaysia. A decline in foreign investment is likely to have secondary effects in contributing to the decrease of Malaysia's export and import levels beyond the suppression of import demand resulting from the crisis and devaluation of the Ringgit.

i. Investment and Services

Malaysia maintains investment limits which predate the crisis and which affect the local business and investment climate. In general,

Malaysian law requires that business entities include a domestic partner with a minimum 30 percent stake. Banking and other financial services providers face foreign-held equity restrictions, as do suppliers in the wholesale/retail, distribution and multi-level marketing, construction and legal services sectors. U.S. officials have and will continue to raise concerns over investment restrictions in the distribution services sector as a priority and will continue to monitor developments.

ii. Tariffs

In 1997 and 1998, Malaysia raised tariffs on certain goods from 0 percent in 1996 to current levels of between 5 and 20 percent ad valorem. The products affected include some types of heavy machinery and construction equipment, automobiles, motorcycles, and home appliances. Malaysia in 1998 also implemented a new import approval scheme for construction equipment which could further restrict market opportunities for U.S. exports. Malaysia's rationale for the measures affecting construction equipment is to encourage reconditioning and repair of existing equipment; however, it is unclear that this policy has promoted this objective. Malaysia is reducing tariffs for information technology products covered by the Information Technology Agreement (ITA), under which most of its tariffs will be bound at zero by the year 2000.

iii. Local Content-Related Investment Incentives

Malaysia has taken a number of steps which confer tariff or tax benefits, based on the amount of locally produced parts or inputs utilized, in order to promote the development of domestic automobile manufacturers under its "national automobile" program. As required by the WTO Agreement on Trade-Related Investment Measures, Malaysia's various incentives for local production were to be eliminated by January 1, 2000. However, in late-December 1999, Malaysia

notified WTO members of its desire to obtain a two-year extension of its auto-related measures.

iv. Intellectual Property Rights

The Malaysian Government has worked closely with the United States and U.S. industry to suppress end-user piracy of copyrighted works, principally business application software. Nevertheless, Malaysia still has not made effective efforts to regulate optical disk (OD) production facilities or to address the dramatically increasing problem of pirated CDs, VCDs and CD-ROMs. Domestic production of optical disks far exceeds domestic demand, and has contributed to substantial domestic and export markets for pirated goods. While we are encouraged that Malaysia in 1999 drafted legislation to implement a comprehensive regulatory scheme, including licensing of OD facilities, the bill has not been submitted to the legislature; although we have been assured that this will happen soon. The United States continues to reiterate its serious concern over these developments and urges Malaysia to make enactment of an effective OD regulatory bill and enforcement its top priorities.

c. Philippines

i. Market Access Issues

Despite the Estrada Administration's articulated objective to resist domestic protectionism, and to maintain open-market policies to promote competitiveness and stability, the Philippine Government continues to consider proposals which would restrict import competition by means of increased taxes, surcharges and tariff increases. The Philippines in 1999 raised applied tariffs on a range of goods of importance to the United States. U.S. companies and exporters have also observed an increase in the frequency of problems involving customs valuation and preshipment verification of invoice value for a range of agricultural and manufactured goods. The United States will continue to address these and similar instances of "creeping protectionism." As a

signatory to the Information Technology Agreement (ITA), the Philippines is implementing tariff reductions for covered products, most of which will be bound at zero by the year 2000.

ii. Intellectual Property Rights

In June 1997, the Philippines enacted a comprehensive law on intellectual property rights. The law entered into force on January 1, 1998, although formal implementing regulations for most provisions of the law were not promulgated until later. On balance, the law represents a significant step toward implementation of the Philippines' commitments under the WTO TRIPS Agreement. However, several provisions of the law are of concern to the United States and could pose serious policy implications and investment disincentives if not adequately addressed. Specific concerns include provisions governing the circumstances under which decompilation of software programs is permissible, *ex parte* search and seizure, and restrictions on technology licensing arrangements. The United States also continues to monitor carefully Philippine enforcement efforts and judicial efficiency.

iii. Customs

Many U.S. companies have identified customs valuation and price verification practices as the single largest impediment to transacting business in the Philippines. In April 1996, the Philippines enacted legislation abolishing the use of the Philippines' previous customs valuation practice based on "home consumption value" (HCV). Similar concerns are expressed regarding implementation of the new valuation scheme (based on the "Brussels Definition of Value") which lacks transparency and may be inconsistent with the WTO Agreement on Customs Valuation. U.S. companies also report continuing problems with price verification procedures as part of the preshipment inspection (PSI) process, including routine overvaluation or "up-lift" of invoice prices without substantiation, failure to provide required customs documentation, questionable grievance

and appeals procedures, and solicitation of "facilitation" fees not related to the services rendered. The United States continues to urge Philippine authorities to facilitate rapid implementation of the WTO Agreement on Customs Valuation and adherence to WTO PSI requirements.

d. Singapore

Singapore imposes tariffs on only four categories of goods, allowing nearly 96 percent of its imports to enter duty-free. Singapore's tariffs on products covered by the Information Technology Agreement will be bound at zero by the year 2000.

One aspect of Singapore's trade regime that remains a concern for the United States is the protection of intellectual property rights. Although Singapore during the past year has acceded to the Berne Convention, revised several IPR laws in order to become TRIPS-complaint in advance of the January 1, 2000 deadline, and has stepped up enforcement and consumer awareness efforts, Singapore's piracy rate continues to grow. Government efforts to promote a "code of conduct" for local manufacturers of optical disks in order to clean up the domestic industry has helped to focus attention on the growing problem of piracy of CDs, VCDs, and CD-ROMs. We continue to work with U.S. industry to develop effective approaches to curtailing retail piracy in Singapore.

e. Thailand

i. Intellectual Property Rights

In recent years, Thailand's commitment to effective IPR protection has been uneven, as evidenced by growing piracy rates, inconsistent coordination between enforcement authorities and failure to enact TRIPS-consistent trademark law. Thailand opened specialized IPR and international trade courts in late 1997 which has resulted in moderate improvements in IPR protection, but has not resulted in the imposition of penalties

sufficient to deter IPR infringement. In June 1998, the United States and Thailand concluded an Action Plan, which among other things, is intended to enhance routine coordination among relevant Thai Government agencies in order to improve retail-level IPR enforcement and to prioritize the enactment of key legislation. The Action Plan also sets the foundation for implementation of measures to address the growing problem of optical disk (OD) piracy. The United States will continue to press the Thai government to make meaningful progress on IPR protection and enforcement, and will continue to consult with U.S. industry to develop specific proposals to enhance copyright and trademark protection in Thailand.

ii. Market Access Issues

Thailand's applied tariffs are generally higher than many of its neighbors. As a signatory to the Information Technology Agreement (ITA), Thailand is implementing tariff reductions for covered products, most of which will be bound at zero by the year 2000.

iii. Worker Rights

Since 1992, the Thai worker rights situation has been the subject of an ongoing investigation under the Generalized System of Preferences. Of specific concern to the United States is the failure of successive Thai Governments to enact legislation which confers internationally-recognized labor rights to state enterprise workers. In late 1998 the Thai Parliament enacted the State Enterprise Labor Relations Act (SELRA); however, a court deemed technical aspects of the law to be inconsistent with provisions of Thailand's constitution which was revised that same year. The Thai Government subsequently introduced a modified bill, intended to satisfy constitutional requirements; unfortunately enactment of an ILO-consistent bill was significantly impaired in 1999 as a result of discord between the Thai House and Senate which triggered a "cooling off" period pursuant to

parliamentary procedure. That time period elapsed at the end of January 2000, and SELRA was enacted on an expedited basis in February of this year. While this is a welcome development, the United States is awaiting confirmation of the ILO-consistency of the law and additional actions by the Thai Government necessary to implement these core worker rights.

f. Normalization of Trade Relations with Vietnam and Laos

Vietnam

In 1995, President Clinton normalized diplomatic relations with Vietnam, and directed that the process of economic normalization, in accordance with U.S. laws, be undertaken. A key element of economic normalization is the establishment of "normal trade relations" (NTR) status between the two countries. Under U.S. law, in order for Vietnam to receive such "NTR" treatment from the United States (i.e., to have its exports to the United States be subject to the same tariffs that are afforded to nearly every other country) two legal conditions must be met. First, the President must grant a waiver of the "Jackson-Vanik" provision of the trade laws, indicating that the country is making progress in allowing free emigration. Second, the United States must conclude a bilateral commercial agreement with that country, which must be approved by the U.S. Congress.

In 1999, progress was made on both of these fronts. First, President Clinton renewed the Jackson-Vanik waiver for Vietnam that he first granted in 1998 (the waiver must be renewed annually). In July 1999, USTR concluded a comprehensive trade agreement in principle with Vietnam, which would begin to open its markets for agricultural and industrial goods, key services such as banking, insurance, telecommunications, and distribution, and protection of intellectual property. The agreement now awaits finalization by the two sides (Vietnam has taken a number of months to conduct its final internal review and

political ratification of the pact) and needs to be approved by the U.S. Congress, in connection the annual NTR process.

Laos

In 1997, the United States completed a comprehensive bilateral trade agreement with Laos aimed at normalizing trade relations. Laos, unlike Vietnam, is not covered by the “Jackson-Vanik” provisions of U.S. trade law. Instead, it requires legislation enabling the President to grant normal trade relations status to Laos upon formal signature of the agreement. The Administration supports the enactment of such legislation by Congress.

3. Republic of Korea

a. Macroeconomics and Trade

At the end of 1997, the IMF negotiated a macroeconomic stabilization package with the Korean Government when the value of the *won* depreciated dramatically due to a large outflow of foreign investment. The stabilization package for Korea included credit from the IMF, the World Bank, and the Asian Development Bank.

The stabilization plan focused on: (1) restructuring the financial and corporate sectors to make them more market-driven, efficient, transparent, and open to foreign investment; and (2) eliminating trade- and competition-distorting policies. Korea’s trade-related reforms included: (1) early elimination of WTO-prohibited export and domestic content subsidies and the import diversification program (which prohibited many Japanese imports); and (2) a reduction in the number of products subject to tariff adjustments, or snapbacks. Korea also agreed to liberalize its import licensing and certification procedures and to bind its OECD financial services market access commitments in the WTO.

The Korean Government made progress on implementing some of its reform commitments in

1998 and 1999, particularly in the financial sector by rationalizing and recapitalizing its banks, and by consolidating regulatory authority over the financial sector in a new, independent Financial Supervisory Commission (FSC). However, the Korean Government still maintains a majority ownership in several of the largest commercial banks in Korea and a significant stake in a number of others. Korean authorities are now in the process of restructuring the Investment Trust Companies (ITCs).

With respect to changes in corporate practices, Korea is in the process of implementing international standards on accounting practices and has provided for the appointment of outside directors on corporate boards. The rights of small shareholders have been strengthened, while restrictions on foreign participation have been eased. Cross guarantees of major conglomerates are being reduced, and bankruptcy laws have been amended.

That said, the Korean Government’s record on implementation of some of its trade-related stabilization commitments has “fallen short of the mark.” For example, the U.S. Government has expressed concern about the Korean Government’s decision to maintain tariffs at the highest “snapback” level, while eliminating the “snapback,” or tariff adjustment mechanism. The U.S. Government will continue to work with Korea to ensure full follow-through on its trade-related stabilization commitments.

In addition, many of the systemic reforms that President Kim Dae Jung laid out for Korea have yet to be implemented. Corporate restructuring efforts undertaken thus far have yielded little change in the structure of Korean industrial sectors, including motor vehicles, steel, and shipbuilding. The U.S. Government has noted in representations to the Korean Government that for restructuring to be considered meaningful: (1) it must yield efficient, market-driven companies; and (2) the process through which it is carried out must be open, transparent, and treat foreign

creditors equitably, and comport with Korea's international obligations.

The fiscal, monetary, and restructuring policies laid out by the Kim Dae Jung administration have contributed to a resumption of foreign and domestic/consumer confidence in Korea's economy. In 1999, Korea grew at a rate of nine to ten percent, after experiencing negative growth in 1998. The United States ran a bilateral trade deficit with Korea of \$8.3 billion in 1999.

b. OECD

In late 1996, the Korean National Assembly ratified Korea's accession to the OECD. Given Korea's membership in the OECD, the United States expects Korea to implement its WTO commitments and to negotiate in the new round of multilateral trade negotiations as a *developed* country, including in the area of agriculture.

In May 1997, on the fringes of an OECD Ministerial, Korea issued a statement indicating that the government did not support anti-import activity, which had been encountered in the Korean market in the context of the frugality, or anti-consumption, campaign launched by President Kim Young Sam. The Korean Government also issued guidelines to trade officials to ensure that they did not discriminate against imports. While the Korean Government has taken some important steps to address anti-import activity, serious problems in this area persist. The United States continues its work with the Korean Government to ensure that it expeditiously and effectively addresses instances of anti-import activity and reaches out proactively to educate Korean citizens on the benefits of free trade and competition.

In November 1999, the Trade Committee of the OECD reviewed Korea's regulatory regime. In this review, the U.S. Government stressed the need for enhanced transparency and reform of Korea's regulatory system and emphasized that Korean regulations should fully reflect the trade

commitments and policies that Korea has undertaken as a WTO and OECD member. In addition, the United States underscored the need for Korean regulations and other rules, and the officials who administer them, to reflect the free and open trade and investment policy that Korean President Kim Dae Jung has embraced. Among the specific areas of concern flagged by the United States in this review were Korean policies on motor vehicles, pharmaceuticals, telecommunications, *chaebol* reform, import clearance procedures, foreign equity restrictions, and customs classification and border treatment.

Also in November 1999, the OECD Committee on Capital Movements and Invisible Transactions and the OECD Committee on International Investment and Multinational Enterprises reviewed Korea's financial and investment policies. In this review, the United States focused on Korean takeover policies, financial services commitments, and rules on bank ownership and investment in the meat, rice, barley and insurance sectors.

c. Motor Vehicles

In the October 1, 1997 Super 301 report to the Congress, the USTR identified Korean barriers to motor vehicles as a priority foreign country practice. On October 20, 1997, the USTR initiated a Section 301 investigation with respect to certain acts, policies, and practices of the Government of the Republic of Korea that pose barriers to imports of U.S. autos into the Korean market.

After intense bilateral negotiations, on October 20, 1998, the United States and Korea concluded a Memorandum of Understanding (MOU) to improve market access for foreign motor vehicles. Under this MOU, Korea agreed to: (1) bind in the WTO its 80 percent applied tariff rate at 8 percent; (2) lower some of its motor-vehicle-related taxes and to eliminate others, thereby substantially reducing the tax burden on motor vehicle owners; (3) streamline its standards and

certification procedures and adopt a manufacturer driven self-certification system by 2002; (4) establish a new mortgage mechanism to make it easier to purchase motor vehicles in Korea; and (5) continue to actively and expeditiously address instances of anti-import activity and to proactively educate Korean citizens on the benefits of free trade and competition. As a result of the measures the Korean Government committed to in the 1998 MOU, on October 20, 1998, the USTR decided to terminate the Section 301 investigation and to monitor the Korean Government's implementation of these measures.

The first formal review of Korea's implementation of the 1998 MOU took place in April 1999, six months after the conclusion of the 1998 MOU. In December 1999, the U.S. and Korean Governments met again for detailed consultations on the steps Korea has taken and will take to implement this agreement. While implementation of many specific provisions is on track, the U.S. Government is focused on, and concerned about: (1) the lack of substantial increases in market access for foreign motor vehicles in Korea; (2) the lack of meaningful restructuring in the Korean motor vehicle sector; (3) ongoing instances of anti-import activity; (4) the lack of a long-term plan to continue to reduce the tax burden on motor vehicle owners in Korea; and (5) standards and certification issues, such as the potential application of new standards to minivans when they are reclassified as passenger vehicles, the Korean Government's plans on noise and fuel efficiency standards, and others. In addition to following up on these areas, the U.S. Government also will track the operation of the new mortgage system, and work with the Korean Government as it develops its self-, or manufacturer-driven, certification system, which is to be implemented by 2002, per the MOU.

Through formal consultations, including in 2000, the U.S. Government will continue to actively monitor the implementation of the 1998 MOU to ensure Korea's full and faithful implementation.

d. Steel

U.S. steel imports surged in 1998, as chronic overcapacity in the global steel sector was compounded by the Asian financial crisis and the resulting drop in demand in Asia. Korea accounted for nearly 20 percent of the overall growth in U.S. imports of steel in 1998. While imports of steel were down in 1999, the U.S. market has not fully recovered from the import surge. In 1999, the U.S. industry responded to the import surge by filing two Section 201 safeguards cases against imports of steel wire rod and welded line pipe, as well as a series of unfair trade cases. Korea is the largest source of welded line pipe imports to the United States. The President recently granted relief to the U.S. industry in both cases.

In June and November 1998, President Clinton stressed to Korean President Kim Dae Jung the need for the Korean Government to address U.S. concerns about steel. The result was high-level exchanges of letters on steel issues (August of 1998 and April of 1999) in which the Korean Government provided assurances that: (1) it will not direct or support Hanbo, a bankrupt Korean steel company; (2) the impending sale of Hanbo will be managed by an independent international agent and will be market-driven; (3) it will not provide any market-distorting subsidies to the steel sector; and (4) POSCO, the largest Korean steel company, had abolished its dual-pricing system and adopted transparent pricing policies that would not favor any end-user based on its role in the Korean economy or on its export orientation. Korea also committed to selling the remaining Korea Development Bank (KDB) shares in POSCO by the end of 1999, but, this sale was not completed within that time frame. In concert with efforts to reach agreement on these letters, the U.S. Government launched a comprehensive, intensive series of consultations to address U.S. steel concerns with the aim of ensuring that real and substantive progress is made toward getting the Korean Government out of the steel business permanently.

On August 5, 1999, the White House announced its Steel Action Program stating that the U.S. Government would undertake bilateral initiatives with steel exporting nations, including Korea, to address a broad range of unfair practices that support economically unjustifiable capacity. The high-level bilateral dialogue with Korea was reinvigorated. Several working level meetings have been held in Seoul, Washington, and Paris. The objectives of the dialogue continue to be the following:

- ▶ ensuring that the Korean Government addresses anticompetitive activity in the Korean steel sector and ensures open competition inside Korea and in international trade;
- ▶ expeditious, complete, and market-based privatization of Korea's largest steel producer, POSCO;
- ▶ implementation of the Hanbo sale and operation of the company on arms-length terms as outlined in our August exchange of letters, that is, without Korean Government direction or support; and
- ▶ fair trade in steel products.

The U.S. Government has made clear that it will strongly enforce U.S. laws against unfair trade practices in steel through expedited investigations and other appropriate actions, and through the implementation of an early warning system to monitor import trends.

e. Pharmaceuticals

U.S. concerns on pharmaceuticals trade relate to three baskets of issues: (1) listing and pricing on Korea's national health insurance reimbursement schedule, and associated hospital margins and administrative procedures on dispensing; (2) protection of intellectual property rights, particularly protection of clinical data and patents; and (3) regulatory requirements, particularly on

acceptance of foreign and clinical test data and approval of new drugs. USTR, in its 1999 Super 301 trade report, listed these pharmaceuticals trade issues as the bilateral trade expansion priority on the U.S.-Korea agenda.

Throughout 1999, the U.S. and Korean Governments have had a number of letter exchanges and consultations regarding U.S. Government and industry concerns about the treatment of, and market access for, foreign research-based pharmaceuticals in Korea. As a result, the Korean Government has taken some steps to address U.S. concerns. Korea's specific steps included the following: (1) listing imported pharmaceuticals on Korea's national health insurance reimbursement schedule; (2) implementing an Actual Transaction Price (ATP) system whereby both imported and domestically-manufactured pharmaceuticals are reimbursed without hospital margins (such margins had previously benefitted only Korean-produced drugs); (3) committing to adhere to international guidelines on the acceptance of foreign clinical test data and making the approval process for new drugs more science-based; (4) eliminating the requirement for the submission of a Certificate of Free Sale before Phase III clinical trials can commence in Korea; and (5) committing to shorten the overall drug approval process in Korea. That said, to comprehensively and definitively address U.S. concerns, the Korean Government must significantly advance progress further.

The U.S. Government is closely monitoring the implementation of recent changes that Korea has made to its procedures on reimbursement pricing of pharmaceuticals and on regulatory requirements for the acceptance of foreign clinical test data and the approval of new drugs. In addition, the United States will continue to press the Korean Government on all pharmaceuticals trade issues until U.S. concerns are fully and satisfactorily addressed.

f. Intellectual Property Rights

Korea's record on IPR protection and its Special 301 status are important indicators of the nature of Korea's climate for doing business. In April of 1997, the United States downgraded Korea from the Special 301 "priority watch list" to the "watch list" after Korea agreed to an action plan on specific reforms. Korea followed through on this action plan by: (1) improving enforcement of its laws against copyright infringement; (2) opening a patent court; and (3) amending its Trademark Law and Industrial Design Laws. Although Korea has maintained its "watch list" status, the U.S. Government and U.S. industry remain concerned about Korea's failure to provide: (1) full protection for pre-existing copyrighted works as required under the TRIPS Agreement; and (2) adequate and effective data, patent, and trademark protection. In addition, the United States has engaged the Korean Government on concerns that U.S. industry has raised about recent changes to Korean laws on protection of copyrighted works, including computer programs. The U.S. Government will continue to work with the Korean Government to ensure its full compliance with its TRIPS Agreement obligations, including those on protection of test data against unfair commercial use and disclosure, and on protection of copyrights. The United States also has prioritized the need for Korea to improve coordination between its health and safety and IPR officials to ensure that products that infringe existing patents are not approved for marketing. Issues related to Korea's TRIPS consistency must be resolved before signature of a Bilateral Investment Treaty (BIT).

g. Telecommunications

In the context of the 1996 Section 1377 review, the United States and Korea reached an understanding on outstanding problems on the implementation of the 1990 and 1992 bilateral telecommunications trade agreements. The 1996 agreement elaborates on aspects of the existing agreements and commits Korea to several

reforms, specifically, equal treatment in procurement of advanced technologies and effective protection of U.S. intellectual property. Subsequently, however, on July 26, 1996, USTR identified Korea as a Priority Foreign Country (PFC) under Section 1374 of the Omnibus Trade and Competitiveness Act for failure to address a range of impediments in the Korean telecommunications market.

In July of 1997, the U.S. and Korean Governments negotiated a policy statement that resulted in the revocation of the PFC designation in August. In this statement, Korea committed to ensuring that foreign telecommunications equipment suppliers would be treated fairly in areas including procurement, certification, type approval, protection of intellectual property, and technology transfer.

In 1999, the Korean Government raised the ceiling on foreign ownership in the telecommunications sector from 33 to 49 percent, accelerating by 18 months Korea's phase-in of its WTO basic telecommunications commitments.

Also, in 1999, Korea began to plan for licensing third-generation wireless services. The United States has consulted with the Korean Government to ensure that the licensing process does not discriminate against service suppliers or equipment makers based on choice of technology.

h. Financial Services

As a condition in the IMF stabilization package, Korea agreed to bind its OECD commitments on financial services market access in the WTO. In January of 1999, Korea provided WTO members with a revised and somewhat improved schedule of financial services commitments that entered into force as of September of 1999. The U.S. Government will continue to work with Korea to bring about more liberal treatment of foreign financial services providers.

i. Screen Quotas

Korean Law requires that domestic films be shown in each cinema for a minimum number of days per year. Current law requires that Korean films be shown 146 days of the year, with a potential reduction to 106 days. The screen quota issue is part of ongoing Bilateral Investment Treaty (BIT) negotiations.

j. Bilateral Investment Treaty

In 1999, the U.S. Government made progress in negotiations with Korea on a Bilateral Investment Treaty (BIT) aimed at securing Korean commitments on a balanced and open investment regime and providing protections for U.S. investors in Korea. While these negotiations resulted in agreement on the liberalization of investment restrictions in a number of sectors, several key issues are outstanding, including greater access for U.S. investors in telecommunication services, liberalization of the screen quota system, and full TRIPS compliance, specifically, with respect to retroactive copyright protection for pre-existing works and sound recordings.

k. Cosmetics

Impediments to entry and distribution of foreign cosmetic products in Korea have included the following: (1) the Korean Government's delegation of authority to the domestic industry association to screen advertising and information brochures prior to use; (2) provision of proprietary information on imports to Korean competitors; (3) redundant testing; (4) burdensome import authorization and tracking requirements (record-keeping from import to sale); and (5) requirements for animal toxicity test data. During July and August of 1997, U.S. Government officials made representations to Korean Embassy officials on these and other barriers that were in effect at the time. The U.S. Government cited Korea's cosmetics-related measures as a bilateral priority in the 1997 Super 301 report.

On January 1, 1998, the Korea Food and Drug Administration (KFDA) abolished the annual testing requirement for imported cosmetics, and authorized importers to perform the required self-testing, provided that they maintain records for each batch/shipment. In January of 2000, the KFDA eliminated requirements for pre-approval and local testing at the first importation. Foreign cosmetic manufacturers that have passed a facility inspection by the KFDA also are exempt from testing requirements for each batch/test. The U.S. Government will continue to press Korea in a variety of fora until U.S. concerns on its barriers to entry and distribution of cosmetics are fully and satisfactorily addressed.

l. Airport Procurement

During negotiations on Korea's accession to the WTO Agreement on Government Procurement (GPA), the U.S. Government received assurances that airport procurement would be conducted by GPA-covered entities. Since 1997, U.S. companies have alleged that the Korean Airport Construction Authority (KOACA), and its successor organizations, which are responsible for conducting procurement for Incheon Airport, discriminate against foreign firms interested in bidding for projects. The procurement practices of KOACA and its successor organizations, such as short deadlines and domestic partnering requirements, are in violation of WTO GPA requirements and restrict the ability of U.S. firms to participate in bidding.

In 1997 and 1998, U.S. negotiators raised this issue in the WTO Government Procurement Committee and in consultations, including at the highest levels. Korea's response has been to claim that KOACA and its successor organizations are not covered by the GPA. As Korea's position on this issue remained unchanged, on February 16, 1999, the U.S. Government requested consultations under WTO dispute settlement procedures and consultations were held on March 17, 1999. On May 11, 1999, the United States requested the establishment of a

WTO dispute settlement panel, which was formed on September 8, 1999. The meetings of the panel were held in October and November of last year, and the panel is scheduled to circulate its report in April of 2000.

m. Distilled Spirits

Despite Korean consumer interest in U.S. whiskey, U.S. exports of this product to Korea have historically been very low, accounting for less than one percent of the total Korean market for distilled spirits because of the exorbitant taxes and tariffs they face. Prior to January of 2000, Korea's taxation of alcoholic beverages was based on a two-tiered regime. First, under a general liquor tax law, Korea imposed an *ad valorem* tax of 100 percent on whiskey and brandy, and of 80 percent on vodka, rum, and gin. At the same time, Korea applied a tax of only 35 percent to *soju*, the locally produced Korean liquor. The Korean Government compounded this difference in liquor tax rates by applying another tax – an education tax – on alcoholic beverages and by basing the education tax rate on the liquor tax rate. The effect of these tax policies was the application of an education tax of 30 percent on U.S. whiskey and of only 10 percent on *soju*. In short, the effective tax rate on whiskey was 130 percent and on *soju* only 38.5 percent.

In 1997, the United States and the EU initiated dispute settlement proceedings against Korea because of this discriminatory tax system. In July of 1998, a WTO dispute settlement panel ruled that Korea's taxes on alcoholic beverages were discriminatory, and in January of 1999, the Appellate Body upheld this decision. The panel found, and the Appellate Body agreed, that Korea's two liquor taxes violated Article III:2 of the General Agreement on Tariffs and Trade (GATT) because they afforded protection to domestic production of *soju*.

In April of 1999, the United States and the EU requested that the period of time for Korea to implement the panel's recommendation be

determined by arbitration because Korea wanted 15 months, which the United States and the EU opposed. The WTO arbitrator found that Korea should comply within 11.5 months, *i.e.*, by January 31, 2000.

Korea complied with the panel and Appellate Body decisions on January 1, 2000, one month earlier than required, by amending two laws to harmonize its tax rates on domestically-produced and imported liquors. In fact, the Korean Government actually lowered taxes on imported whisky by 28 percentage points. The U.S. Government will continue to monitor Korean policies affecting producers of *soju* to ensure Korea's continued compliance with its WTO obligations.

n. Beef

Pursuant to a 1989 GATT panel ruling against Korea, the Korean Government committed to phasing out its balance-of-payment restrictions on beef. Subsequently, in 1990, and in July of 1993, the United States and Korea concluded an exchanges of letters and Records of Understanding (ROUs) under which Korea agreed to annual, increasing minimum market access levels for beef imports through 1995. The 1993 agreement also guaranteed direct commercial relations between foreign suppliers and Korean retailers and distributors and provided that a growing volume of beef be sold through that channel instead of through a state trading organization. Specifically, the agreement provided for the following: (1) an increase in the minimum annual quotas; (2) an increase in the number of Korean meat outlets and retailers that can undertake commercial transactions with U.S. exporters without Korean Government intervention – the Simultaneous Buy/Sell (SBS) system; (3) dramatically increased annual SBS sub-quota amounts; and (4) a ceiling on the mark-up levied on the duty-paid price of imported beef. Australia and New Zealand – the other two major suppliers of beef to Korea – entered into identical ROUs on beef issues with Korea.

In December of 1993, the July agreement – including provisions for increasing the minimum market access quota – were extended.

Pursuant to section 306 of the Trade Act, the USTR is monitoring Korea's implementation of its commitments on beef imports. The U.S. and Korean Governments have met quarterly on the specifics of Korea's implementation record on the 1993 agreements. In 1997, Korea did not meet its annual commitment to import 167,000 metric tons of beef. In 1998, Korea fell short of its 187,000 metric ton quota by approximately 53 percent. In 1999, Korea again failed to meet its minimum market access commitment on beef.

Senior U.S. Government officials have repeatedly sought Korea's elimination of government impediments to the entry and distribution of foreign beef. In September and November of 1998, the U.S. and Korean Governments held two rounds of talks, and in January 1999, met to try to reach agreement on a plan to establish a market-driven beef import system in Korea. As no agreement was reached over the course of these talks, the U.S. Government requested WTO dispute settlement consultations on February 1, 1999. Consultations were held in March of last year. As no settlement was reached at these consultations, the United States requested formation of a panel, which the WTO Dispute Settlement Body (DSB) established in May of 1999. Australia's subsequent request for formation of a panel on Korea's beef measures was approved in July. The DSB also agreed in July that the panel established in May to examine the U.S. complaint would examine the Australian complaint as well.

The first meeting of the combined panel was held in December of 1999 and the second meeting in mid-February of 2000. Canada and New Zealand are participating in the panel process as third parties.

The United States's complaint is focused on Korea's (1) requirements that imported beef be

sold only in specialized imported beef stores and Korean laws and regulations restricting the resale and distribution of imported beef by SBS super-groups, retailers, customers, and end-users; (2) discretionary import licensing regime; (3) imposition of duties and charges in the form of markup, which is not provided for in Schedule LX; and (4) failure to fulfill its reduction commitment for domestic support.

o. Rice

The Korean Government continues to exercise full control over the purchase, distribution, and end-use of imported rice. The state trading enterprises that administer the WTO-mandated minimum access program continue to purchase only low-quality Asian rice, as Korean law forbids the use of imported rice for purposes other than industrial or processing uses. As a result, high quality U.S. rice is effectively shut out of the Korean market. In addition, Korea, once again, has allowed shipments of the 1999 minimum access purchases to extend into 2000. This unilateral Korean action has complicated efforts to monitor Korea's compliance with its WTO obligations. The U.S. Government also is concerned with Korea's recent statements that Korean rice policies are "off the table" in the new round of multilateral agriculture negotiations provided for as part of the built-in agenda. The United States will continue to actively engage Korea to ensure its full compliance with its current obligations on rice and to press for further liberalization of Korean trade policies on this commodity.

p. Oranges

The Cheju Citrus Cooperative, a Korean producer group, has controlled the allocation of the in-quota quantity of Korea's orange tariff-rate quota (TRQ). In the past, Cheju has filled the quota, with most of the imports coming from the United States. In 1999, however, the quota was not filled. Also in 1999, Korea decided to auction a portion of the quota, despite protests from the United States, based on concerns that an auction system

would add costs beyond tariffs to entering the Korean market.

Korea's phytosanitary barriers also hindered market access for citrus in 1999. Korea's National Plant Quarantine Service (NPQS) has delayed in recognizing the U.S. Department of Agriculture's (USDA) lifting of certain quarantine restrictions, and has expanded U.S. fruit fly quarantine zones to include entire counties rather than the scientifically-based areas established by USDA. The Korean Government's policies to expand and extend USDA quarantine zones are some of the most restrictive and onerous in the world. U.S. Government officials have engaged Korean Government officials on this quarantine zone issue through multiple written and verbal representations. The United States will continue to press Korea on this trade policy issue until it is resolved.

q. Potato Preparations

The Korea Customs Service's (KCS's) repeated misclassification and change in border treatment of potato preparations to the trade-restrictive Harmonized System (HS) heading 1105 (pure potato), with an in-quota quantity of 60 metric tons and an over-quota tariff rate in excess of 300 percent, has essentially stopped U.S. exports of these products to the Korean market. Potato preparations should enter Korea in the unrestricted HS heading 2005 with a current applied tariff rate of 20 percent and a bound rate of 31.5 percent. Instead, Korea has been classifying these products in the more restrictive, HS 1105, which is subject to a tariff-rate quota (TRQ).

In 1993, the KCS suddenly reclassified a U.S. potato preparation as pure potato, thereby subjecting it to more restrictive border treatment. The U.S. Government objected to this action, and asked international customs authorities – then, the Customs Cooperation Council (CCC), the predecessor to the World Customs Organization (WCO) – to provide an opinion on the proper classification of the product in question. The

CCC found that the U.S. product was properly classified as a potato preparation, and therefore subject to a straight tariff, rather than to more restrictive treatment. Subsequently, the KCS agreed in an exchange of letters with a U.S. official to abide by the CCC ruling. In January of 1997, however, after initiating a review of the classification of a number of preparation products, the KCS once again abruptly reclassified another U.S. potato preparation into the same trade restrictive heading, HS 1105. The U.S. Government subsequently pursued resolution of the issue in numerous bilateral meetings with the Korean Government, and has raised it various multilateral fora.

Even after assurances by the Korean Government that the U.S. product would enter Korea as a potato preparation if a similar European product were found to be a preparation by the WCO – which it was – and a letter in which the KCS agreed to classify blended potato products according to internationally recognized criteria, U.S. exporters of potato preparations continue to experience market access problems in Korea. The U.S. Government has made it very clear to the Korean Government that patience on this issue has worn thin and that the United States expects a definitive resolution through an exchange of letters in early 2000.

r. Agricultural Tariffs

In 1999, the U.S. Government discovered a discrepancy between Korea's applied tariff rates on several agriculture items – peanuts, popcorn, potato flour, potato flakes, and wheat and soybean meal – and its WTO bindings and tariff commitments in a 1993 U.S.-ROK Record of Understanding (ROU) and a February 1994 exchange of letters. In February of 1999, U.S. Embassy officials in Seoul brought these discrepancies to the attention of the Korean Government. Korean officials acknowledged these discrepancies, and gave indications that they would search for ways to rectify them. Despite letters from high-ranking U.S. officials and

subsequent bilateral meetings in which this issue was raised, a discrepancy in the tariff rates on most of these products remains in effect. The U.S. Government will continue to press Korea until its duties on all agriculture products are brought into compliance with Korea's WTO and bilateral commitments.

s. Import Clearance Procedures, Food Standards, and Labeling Requirements

After WTO dispute settlement consultations with the United States, between 1995 and 1999, the Korean Government revised its import clearance procedures by: (1) expediting clearance for fresh fruits and vegetables; (2) instituting a new sampling, testing, and inspection regime; (3) eliminating some non-science-based phytosanitary requirements; (4) beginning revisions of the Korean Food and Food Additives Codes, for example, by bringing Korean pesticide residue level standards for citrus into conformity with CODEX standards; and (5) requiring ingredient listing by percentage for major, rather than all, ingredients. In 1999, the Korea Food and Drug Administration (KFDA) issued for public comment proposed additional revisions to the Food Code, the Food Additives Code, and labeling standards for food. The KFDA's proposed changes address many U.S. industry concerns, including mandatory Korean language labeling of product type and excessive restrictions on food and food additives. However, additional work will be needed to bring Korea's Food and Food Additives Codes into conformity with international standards, specifically those related to chocolate and food additives.

In general, U.S. suppliers of food and agricultural products continue to encounter trade-impeding practices in Korean ports of entry and Korean clearance times are still slower than in other countries in the region. Surveys of U.S. trading partners in Asia indicate that import clearance for most agricultural products requires less than three to four days. In Korea, import clearance for new products still typically takes ten to eighteen days

(and four to six months if a food additive is used that is not specifically recognized in Korea's Food Code for use in that product). The Korean Ministry of Agriculture and Forestry (MAF) accounts for the greatest delays in import clearance, specifically through non-science-based quarantine, and burdensome documentation, requirements.

The United States will continue its dialogue with the Korean Government on its import clearance procedures until clearance times in Korean ports of entry are comparable to those in other Asian ports and Korean procedures are based on science and consistent with international norms.

t. Shelf-life

In November of 1994, USTR accepted a Section 301 petition filed by the National Pork Producers' Council, the American Meat Institute, and the National Cattlemen's Association, alleging that a number of Korean practices – especially government-mandated shelf-life limits and long delays at the port – have effectively prohibited U.S. meat imports. As a result of WTO dispute settlement consultations with the United States, in July 1995, Korea agreed to phase out its government-mandated shelf-life requirements on certain products and to allow manufacturers to set their own "sell-by" dates. The 1995 Agreement also covered other concerns raised in the petition, such as pork tendering procedures and temperature requirements. The U.S. Government will continue to work with the Korean Government to ensure that the 1995 Shelf-life Agreement is implemented fully and faithfully.

Korea continues to maintain government-mandated shelf-life requirements for items such as dairy products packaged in tabletop cartons and bottled water.

4. India

General

Important progress was made during 1999 in developing a more constructive long-term trade relationship with India. Significant steps were taken on a number of bilateral and multilateral issues, and the stage was set for broad-based, productive and cooperative longer term relationship. This included the settlement of two longstanding issues – removal of Indian quantitative restrictions and the Article XXVIII renegotiation of certain agricultural tariffs. However, India continues to limit market access through irritants such as automotive TRIMS, soda ash restrictions, and minimum reference prices for customs valuation.

a. BOP WTO Case

India has maintained bans, restrictive licensing, and other quantitative restrictions (QRs) on imports of industrial, textile, and agricultural products for fifty years, and has sought to justify these restrictions on the basis of the balance of payments (BOP) provisions of GATT. In 1999, BOP restrictions applied to approximately 15 percent of India's tariff lines. Virtually all consumer goods are affected, as are many agricultural, textile, and petroleum-related products.

In 1997, during India's consultation with the WTO Committee on Balance-of-Payments Restrictions, the International Monetary Fund stated that India no longer had a BOP crisis permitting recourse to the GATT BOP exception. However, India insisted on at least six years to remove the BOP QRs. Following unsuccessful settlement talks with India, the United States initiated dispute settlement proceedings against India in July 1997. A dispute settlement panel was established in November 1997 and the panel issued its final report in April 1999 affirming the U.S. contention that these measures were inconsistent with India's WTO commitments. On

May 25, India filed a Notice of Appeal with the Appellate Body. The Appellate Body rejected India's claim that its balance of payments situation justified import restrictions.

On December 28, 1999, the United States and India reached an agreement to lift these restrictions. Under the agreement, India committed to eliminate all of its more than 1,400 QRs by April 1, 2001. Half of the tariff lines will be free of restrictions by April 1, 2000; the remaining half of the restrictions will be lifted by April 1, 2001. Eliminating these restrictions will provide market access opportunities for U.S. producers in key sectors such as textiles, agriculture, consumer goods, and a wide variety of manufactured products. India had previously reached agreements with the EU, Japan, and other trading partners to remove these restrictions by April 2003. The agreement with the United States advances that time table by two years.

b. Intellectual Property Rights and the WTO TRIPS Mail Box

As a signatory to the Uruguay Round of GATT trade negotiations, including the Agreement on Trade Related Aspects of Intellectual Property Rights, India was required to comply with most of the obligations of the TRIPS Agreement by January 1, 2000, and must introduce a comprehensive system of product patents for pharmaceuticals and agricultural chemicals no later than 2005. The Indian Government has announced its intention to conform fully to the IPR-related requirements of the Uruguay Round. In December 1999, Parliament successfully passed three IPR related bills: the Copyrights Amendment Bill, the Trademark Bill, and the Geographic Indicators Bill. Parliament, however, failed to amend the Patents Act and, thus, failed to meet fully its WTO TRIPS obligations by the January 1, 2000 deadline.

In April 1999, the United States and India resolved the WTO dispute brought by the United States regarding India's implementation of

Articles 70.8 and 70.9 of the TRIPS Agreement. Through the enactment of the Patents (Amendment) Act 1999 and its accompanying regulations, India established a mechanism for the filing of so-called “mailbox” patent applications and a system for granting exclusive marketing rights for pharmaceutical and agricultural chemical products.

c. Auto TRIMS

The United States considers India’s measures affecting trade and investment in the motor vehicle sector to be inconsistent with India’s obligations under Articles III and XI of the GATT and Article 2 of the Agreement on Trade-Related Investment Measures. These measures require manufacturing firms in the motor vehicle sector to achieve specified levels of local content; to achieve a neutralization of foreign exchange by balancing the value of certain imports with the value of exports of cars and components over a stated period; and to limit imports to a value based on the previous year’s exports.

On June 2, 1999, the United States requested consultations with the Government of India pursuant to the WTO Dispute Settlement Understanding. Those consultations were held on July 20, 1999, and we are evaluating options available to preserve our interests.

d. GSP

The GSP subcommittee decided in December 1998 to accept for review the petition of the American Natural Soda Ash Corporation (ANSAC) to withdraw, suspend or limit the application of GSP treatment to Indian imports due to the lack of market access to the Indian market stemming from the injunction of the Indian Monopolies and Restrictive Trade Practices Commission barring ANSAC imports. In India’s FY1999-2000 budget, it raised the import tariff on soda ash to 38.5 percent, which is now the highest import tariff on soda ash in the world. A public

hearing was held on March 23, 1999 and a decision is pending.

The Government of India continues to request restoration of benefits under GSP it lost in the early 1990s because of IPR violations. In December 1999, USTR welcomed the steps India took earlier this year to implement legislation regarding the so-called “mailbox” provisions of the TRIPS Agreement. In light of this effort as well as other on-going efforts to implement TRIPS by the Government of India, USTR promised to give careful consideration to restoring GSP benefits on pharmaceutical and agricultural chemicals if India implemented its TRIPS obligations by January 1, 2000.

e. Insurance

On December 7, 1999, the India Parliament passed the Insurance Regulatory and Development Authority (IRDA) Bill that removed the Government monopoly on insurance and established an Insurance Regulator. The law opened India’s insurance market to private participation for the first time, but limited foreign equity participation up to a level of 26 percent through subsidiaries. After a careful study of the new law, USTR will determine, in consultation with industry, approaches to build on this development to advance U.S. commercial interests.

f. Reference Pricing

In December 1998, three weeks after imposing antidumping duties on certain steel products, the Government of India established minimum reference prices for certain other imported steel products: hot-rolled steel coils, cold rolled steel coils, hot-rolled sheets, and alloy steel bars and rods. Under this regime, India prohibits the import of these products when the import values are below the established minimum price. India had noted that the regime was adopted to discourage dumping. Although, the United States does not export steel to India, U.S. industry is

fearful that this practice, which violates India's obligations under the customs valuation agreement, could divert imports to the United States.

Minimum prices on steel were withdrawn on January 1, 2000, for primary products but still apply to secondary merchandise. We are evaluating the appropriate response to India's decision to retain minimum prices for secondary merchandise.

5. Taiwan

During 1999, Taiwan completed virtually all substantive discussions with members of the World Trade Organization, including the United States, regarding its accession. The WTO Working Party held two meetings in 1999 to review details of Taiwan's Working Party Report, market access schedules and new trade regulations, in particular arrangements regarding liberalization of its agricultural markets. Although the United States has completed its review of Taiwan's accession package, other WTO Members continue to work on verification and rectification of Taiwan's documents.

As part of our bilateral agreement on Taiwan's accession to the WTO, Taiwan agreed to provide access for some previously banned agricultural products prior to completion of Taiwan's accession process. Under the agreed arrangements, the United States exported approximately 10,000 MT of chicken, 5000 MT of pork belly, and 7500 MT of pork offal.

Agreements were also concluded on importation of motorcycles of over 700cc, liberalization of Taiwan's wire line telecommunications markets, and certification of U.S. meat imports. In 1999, Taiwan also agreed on a procedure for recognition and application of internationally approved minimum residue levels (MRLs) for pesticides while Taiwan authorities gather information and establish new MRLs, where appropriate. Currently, Taiwan has fewer than 1,000 MRLs as

compared with more than 10,000 MRLs in the United States. Prior to reaching agreement on this issue, Taiwan authorities had intended to ban imports of fruits and vegetables exposed to pesticides without a MRL in Taiwan. The Agreement also reinforces the obligation of Taiwan authorities to adopt and enforce MRLs based on scientific evidence and puts in place a process for U.S. companies to apply for permanent MRLs in Taiwan.

a. 1998 Bilateral Agreement

Taiwan's WTO bilateral agreement with the United States, concluded in February 1998, includes both immediate market access and phased-in commitments and will provide substantially increased access for U.S. goods and services, including agriculture exports to Taiwan, our seventh leading export market.

Highlights of the 1998 bilateral WTO agreement included commitments by Taiwan to:

- ▶ reduce its overall tariff rates below 5 percent;
- ▶ reduce tariffs and discriminatory taxes of imported automobiles;
- ▶ open trade in the full range of products including chemicals, medical equipment; furniture, toys, steel, paper, construction and agricultural equipment, wood, civil aircraft, and distilled spirits;
- ▶ improve access for telecommunications service providers so that foreign companies can hold controlling interest and reduce excessively high interconnection charges for new telecommunications companies;
- ▶ accede to the WTO's Government Procurement Agreement and establish new arbitration procedures for resolving disputes involving major projects

undertaken by the Taiwan authorities;

- remove import bans on pork, chicken, variety meats, and rice, as well as to provide immediate access for most of these products.

b. Intellectual Property Rights

While Taiwan has made significant progress over the last several years in curtailing piracy of intellectual property, recent efforts in this area by the Taiwan authorities have slowed.

Most significantly, U.S. firms, both large and small, continue to experience major procedural problems in accessing the Taiwan judicial system to bring patent or copyright infringement cases. Despite extended discussions with the United States, procedural technicalities such as overly restrictive conditions for recognizing powers-of-attorney, continue to thwart many cases of intellectual property rights infringement brought by foreign parties in the Taiwan court system. Also, the Taiwan authorities have been slow to implement an effective and enforceable system to ensure that all CDs produced bear codes identifying the manufacturer and other data.

Major Taiwan computer-chip manufacturers continue to move – albeit slowly – toward final agreement on a system to mark all chips with identifying data. Initiation of such a program should make it much easier to find and prosecute video game pirates in Taiwan. The United States Government, through the American Institute in Taiwan, continues to press Taiwan on each of these issues.

c. Telecommunications

Taiwan is in the process of issuing new licenses to consortia to provide fixed line telecommunications services that will compete with the current telecommunications monopoly provider. Requirements for the new licenses

included very large capitalization (\$ U.S. 1.25 billion) as well as significant requirements for network build-out before service could be initiated. The United States will monitor and ensure that Taiwan revises its licensing regime to reflect its commitment to the United States (as negotiated in Taiwan's WTO agreement) to open fully its fixed line telecommunications sector to all qualified applicants by July, 2001.

d. Cable TV

The Taiwan authorities have moved deliberately in recent months to halt the deterioration in the competitive environment within the Taiwan Cable TV market. However, monopolization of program distribution remains a key structural problem for foreign broadcast program providers in the Taiwan market.

6. Hong Kong (Special Administrative Region)

a. Intellectual Property Rights

Hong Kong undertook significant enforcement actions over the last year to address the problems of piracy. On the legislative front, the proposal to include copyright piracy and trade mark counterfeiting offences under the Organized and Serious Crimes Ordinance was enacted by the Legislative Council in January, 2000. Significant follow-up efforts, however, are needed as piracy problems continue, and the United States Government will continue to monitor these follow-up efforts closely. The Hong Kong authorities are now considering concrete actions to extend the mandate of the special anti-piracy task force, and to prosecute corporate piracy and the illegal loading of software by dealers onto computer hard drives. The Hong Kong public continues to become much more aware of the damage being sustained by its own industries, notably movies and toys, from pirates.

b. Telecommunications

Hong Kong continues to make substantial progress in opening its telecommunications market. Hong Kong's Telecommunications Authority (TA) recently issued (January 2000) five new licences for local fixed telecommunication network services using wireless networks and twelve licences for external fixed telecommunications services using satellites to and from Hong Kong. It also issued to Hong Kong Cable TV a licence to provide telecommunications services over its coaxial cable networks. Hong Kong also decided to liberalize submarine cables landing licences from January 2000 in an effort to attract more international capacity to Hong Kong. Local fixed network (wireline) telecommunications systems, however, remain to be liberalized.

B. People's Republic of China**Overview**

Our China trade policy goals have been to open China's markets to American exports, support Chinese domestic economic reform, and integrate China into the Pacific and world economies. We have used a variety of means to achieve these goals, including commercially meaningful agreements that create opportunities for Americans.

These efforts culminated last November in our historic bilateral agreement on China's accession to the WTO. When China finishes its negotiations with other trading partners and in the WTO – and when Congress approves permanent normal trade relations with China – its market will become far more open to the world than it has ever been. Key features of the agreement are described below.

- ▶ Chinese industrial tariffs will fall from an average of 24.6 percent in 1997 to an average of 9.4 percent by 2005. This spans the range of industries, from traditional manufacturing, such as autos,

aluminum and farm equipment, to information technology products, such as computers and semiconductors, in which tariffs will fall from an average of 13 percent to zero by 2005.

- ▶ In agriculture, for U.S. priority products such as beef, citrus and dairy, tariffs will drop from an average of 31 percent to 14 percent in January 2004. China also will expand access for bulk agricultural products like wheat, corn, cotton, soybean oil and others, permit for the first time private trade in these products, and eliminate export subsidies.
- ▶ China has agreed to grant U.S. trading companies the right to import goods directly, and to own and operate their own distribution systems, thus eliminating required middlemen.
- ▶ In services, the agreement will open the market for a wide range of services, including distribution services, such as wholesaling and franchising, and related services, such as maintenance and repair, trucking and air express; telecommunication services, such as Internet and satellite services; banking, insurance, and financial information services; professional services such as accounting, management consulting, and legal services; hotel and tourism services; motion pictures, and distribution for videos, software entertainment, and periodicals; business and computer services; and environmental services.
- ▶ The agreement also deals, appropriately, with the special and unusual characteristics of the Chinese economy: it addresses state trading; it bans forced technology transfer; it eliminates investment policies intended to draw jobs and technology to China, such as local content, offsets and export performance

requirements; and it provides protections for Americans against import surges from China and from abusive export practices like dumping.

As we worked toward this bilateral agreement, we built upon a record of bipartisan support for a market-opening China trade policy, dating to the lifting of the trade embargo in 1972 and our Bilateral Commercial Agreement in 1980, and including three major specific agreements in the Clinton Administration. These include the following:

- ▶ Intellectual Property – In the early 1990s, China's failure to protect intellectual property rights was one of the most problematic aspects in our trading relationship. This led to trade confrontations with China, including invocation of sanctions on two occasions. The United States ultimately negotiated agreements in 1992 and 1995, and then won further commitments in 1996 that led China to pass world-class copyright, patent and trademark laws; essentially close pirate production facilities; cease the export of pirated products and significantly improve enforcement – the principal focus of the agreements.
- ▶ Textiles – Similarly, textile transshipment and market access barriers have historically been a problem in our textile trade relationship with China. While problems remain, two separate agreements, in 1994 and 1997, combined with sustained enforcement efforts by the U.S. Customs Service and the Administration, as well as imposition of triple charge penalties, have helped to mitigate these problems. The 1997 agreement also committed China for the first time to significantly reduce its textile import restrictions.

- ▶ Agriculture – Most recently, our Agreement on Agricultural Cooperation in April of 1999 lifted long-standing bans on exports of American citrus, meats and Pacific Northwest wheat, imposed without a sound scientific basis. As in the cases of intellectual property and textiles, we are holding frequent consultations with the Chinese authorities charged with implementing the agreement.

Looking ahead, to complete the WTO accession process (before entering the WTO, China must reach agreement with other WTO members and complete a multilateral negotiation which will ensure that its policies comply with broader WTO rules). On our part, we will work closely with the U.S. Congress to secure permanent Normal Trade Relations treatment for China.

WTO accession for China requires no substantial concessions by the United States. We make no change in our current market access policies, and preserve our right to withdraw market access for China in the event of a national security emergency. Likewise, we amend neither our laws controlling the export of sensitive technology, nor our fair trade laws.

We do, however, have one obligation: we must grant China permanent NTR or risk losing the full benefits of the agreement we negotiated, including broad market access, special import protections, and rights to enforce China's commitments through WTO dispute settlement. All WTO members, including ourselves, pledge to give one another permanent NTR to enjoy the benefits available in one another's markets. If Congress were to refuse to grant permanent NTR, our Asian, Latin, Canadian and European competitors will reap these benefits but American farmers and businesses may well be left behind.

Finally, of course, the full benefits of this agreement will require extensive monitoring and enforcement. With permanent NTR in place, WTO accession will substantially strengthen our

enforcement capability with respect to China, for example through WTO dispute settlement, our ability to work with 134 other WTO members instead of acting alone, multilateral monitoring, and our own trade laws. We are also preparing for the largest monitoring and enforcement effort ever given to any trade agreement, as part of President Clinton's request for new enforcement and compliance resources at the USTR, the Commerce Department, USDA and other branches of government with enforcement responsibilities. This effort will cover China's obligations in the WTO and also import issues such as dumping and countervailing duties.

1999 Activities

U.S. trade relations with China are currently based on the bilateral trade agreement on trade relations that first took effect February 1, 1980. The Agreement extends normal trade relations (NTR) treatment to exports from both countries and maintenance of this Agreement is required under the so-called Jackson-Vanik provisions of U.S. trade law. The Agreement is subject to automatic renewal at three-year intervals, but all or part of the Agreement may be suspended if a party lacks domestic legal authority to implement it. The most recent three-year renewal of the Agreement was on February 1, 1998. The next renewal of the Agreement will be on February 1, 2001.

China's receipt of NTR tariff treatment is currently reviewed on an annual basis. To maintain NTR treatment, the President must waive Section 402 of the 1974 Trade Act, the Jackson-Vanik Amendment. The President last notified Congress of his decision to waive Jackson-Vanik and permit NTR renewal for China on June 3, 1999. As discussed below, the Administration will be pursuing enactment of legislation that would terminate application of Jackson-Vanik to China and authorize the President to provide exports from China permanent NTR treatment on the same basis as other WTO Members.

1. WTO Accession

In November 1999, the United States concluded a comprehensive bilateral WTO accession agreement with China. China committed to reduce both tariff and non-tariff barriers to U.S. exports of industrial goods, agricultural products and services. China also agreed to application of specific rules to address import surges, anti-dumping and subsidies practices and to end the application of export performance, local content, offsets, technology transfer and similar requirements on imports and investment.

China's industrial tariffs will fall from an overall average of 24.6 percent in 1997 to an overall average of 9.4 percent by 2005. On U.S. priority industrial products, tariffs will fall to an average of 7.1 percent with the majority of tariff cuts fully implemented by 2003. Tariffs will fall on a broad range of products including wood, paper, chemicals, agricultural and medical equipment. China also committed to join the Information Technology Agreement, so tariffs on products such as computers and semiconductors will fall from an average of 13 percent to 0 percent by 2005.

China's average duty on agriculture will fall from 22 percent to 17.5 percent, with the duties on items of priority U.S. interest falling even more sharply, from an average of 31 percent to 14 percent. China will expand access for bulk agriculture commodities, including corn, cotton, wheat, rice, barely, and soybean oil and will permit private trade in these products as well as imports through state trading enterprises. Tariff reductions and quota growth will be fully phased in by 2004. China also will eliminate agricultural export subsidies, in particular for corn, cotton and rice.

China agreed to phase-in trading rights for most products over a three-year period. This means U.S. firms and individuals can import and export without going through government-approved middlemen. China also agreed to liberalize

distribution services for most products over a three-year period, so that U.S. firms may eventually own and operate their own distribution systems in China, and provide related services such as maintenance and repair services. China also committed to progressively liberalize a broad range of services, including telecommunication services, such as Internet and satellite services; banking, insurance, and financial information services; professional services such as accounting, management consulting, and legal services; hotel and tourism services; motion pictures, and distribution for videos, software entertainment, and periodicals; business and computer services; and environmental services.

While the market access agreement represents a crucial step in China's WTO accession process, China also must conclude bilateral negotiations with a number of other WTO members, including the European Union. The commitments in the U.S. bilateral agreement and other such agreements will be applied on NTR basis and will form an integral part of China's WTO accession agreement.

In addition to completing these bilateral negotiations, China must reach agreement with the participants in China's WTO Working Party on application of WTO rules and any special provisions that may apply to China. After a consensus is reached in the Working Party on China's draft Protocol of Accession, Working Party Report and market access schedules, these documents are transmitted to the General Council which must approve the terms and conditions for China's accession. Normally, approval is by consensus, but a Member may require a vote on the accession which must then be approved by a two-thirds majority of all WTO members.

a. Agriculture

Gaining direct access to China's market for U.S. agricultural products has long been an objective of U.S. agricultural industry in particular, by removing unjustified sanitary and phytosanitary

barriers. In 1992, China signed a bilateral Memorandum of Understanding on Market Access with the United States, agreeing to remove unjustified technical barriers to imports of U.S. agricultural commodities. Though China agreed to address these issues within one year, Chinese regulators were unable to develop specific scientific protocols that would have permitted exports of U.S. wheat and other grain from the Pacific Northwest, meat and poultry, citrus, some varieties of apples, plums, and tobacco.

On April 10, 1999, the United States and China signed an *Agreement on U.S. - China Agricultural Cooperation*, which eliminates technical barriers in China to exports of U.S. citrus, meat and poultry, and wheat and other grains from the Pacific Northwest. Previously, China prohibited imports of U.S. grain from the Pacific Northwest due to possible contamination with TCK. China has now agreed to accept all wheat that is at or below a tolerance level of 30,000 spores per 50 gram sample. China also agreed to refrain from taking any special measures that would adversely affect the cost or competitiveness of U.S. wheat.

Prior to signing the 1999 bilateral agreement, China prohibited imports of U.S. meat and poultry, allowing only shipments from a small number of U.S. plants that had been inspected by Chinese quarantine officials. As a result, most U.S. meat and poultry exports to China were transhipped via Hong Kong. In signing the bilateral agreement, China has agreed to recognize the U.S. inspection system for meat and poultry. China will accept meat and poultry from all U.S. plants approved by the U.S. Department of Agriculture's Food Safety Inspection Service.

U.S. citrus was banned from China due to Chinese concern over fruit flies. In signing the bilateral agreement, China has accepted the U.S. system of pest detection and eradication for U.S. exports of citrus from Arizona, California, Florida and Texas. During the first two years of the agreement, China will accept fruit produced outside a 20-kilometer radius of any outbreak.

After this interim period, the much smaller U.S. standard will apply. A team of Chinese quarantine specialists completed the preprogram initiation inspection of citrus-producing regions in these four states in January 2000 and has stated that they intend to allow imports of U.S. citrus as soon as they conclude their review of the documentation provided by the U.S. during this visit.

Bilateral negotiations on remaining sanitary and phytosanitary issues continued in 1999, with the U.S. and China concluding an agreement on bovine embryos on April 7, 1999. Although barriers still remain on plums, some varieties of apples, tobacco, and potatoes, we continue to hold bilateral discussions. The last consultation took place in November 1999.

b. Intellectual Property Rights

For more than a decade, the United States and China have engaged in detailed discussions regarding the improvement of China's protection of intellectual property rights and market access for products with intellectual property rights protection. In January 1992, the United States and China reached an agreement on improved protection for U.S. inventions and copyrighted works, including computer software and sound recordings, trademarks, and trade secrets. This Agreement focused principally on revisions to China's laws and membership in international intellectual property rights agreements, including the Berne Convention for the Protection of Literary and Artistic Works, the Universal Copyright Convention, the Geneva Phonogram Convention, the Patent Cooperation Treaty, and the Madrid Protocol on the Protection of Marks.

Although China improved the legal framework for intellectual property rights protection based on the 1992 bilateral agreement, enforcement of those laws was seriously deficient. In 1995, the United States and China reached a second agreement that focused on intellectual property rights enforcement and market access issues.

Based on our 1995 IPR Agreement and the Administration's continuing bilateral efforts, China has developed a basic infrastructure for the protection and enforcement of intellectual property rights. Implementation of our bilateral intellectual property rights agreements provided a basis for China's commitment to implement the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) upon accession to the WTO. While additional improvements to China's laws and training of judges and enforcement personnel are essential, U.S. and Chinese right holders can seek administrative and judicial remedies for infringement of their intellectual property rights. China is one of twelve countries that has formally issued a decree to address the "end-user" computer software piracy issue in connection with government purchase and use of legitimate software.

As a result of intensive bilateral implementation and enforcement negotiations in 1996, China has made further progress on enforcement of intellectual property rights. For example, Chinese authorities have shut down 80 illegal CD, CD-ROM and VCD production facilities. This effort has changed China from an exporter of pirated material to being the import target for pirated product from other countries in the region. Other economies in the region, including Hong Kong, Macau, Singapore and others have faced an increase in piracy as production moved from China to other locations. As a result, the Administration's enforcement efforts have also concentrated on these economies.

China also is improving customs enforcement of intellectual property rights. Each year customs authorities seize millions of pirated CDs, CD-ROMs and VCDs. Since the importation of pirated product has been on the increase, we have encouraged enhanced cooperation with regional customs authorities, such as those in Hong Kong and Macau, Vietnam and others, to stop this trade in pirated product.

Under our bilateral agreements, market access for computer software, motion pictures, videos and sound recordings have improved. China also has made further commitments on market access in the context of our bilateral WTO accession agreement.

4. Further Steps to Improve Protection for IPR and Market Access

China's last major revisions to its intellectual property rights laws and regulations occurred after the 1992 Bilateral Agreement. Based on its experience in implementing its intellectual property rights laws, Chinese authorities are engaged in the process of revising the copyright, patent and trade mark laws and taking further steps necessary to comply with the requirements of the TRIPS Agreement. The United States has also urged China to do a comprehensive amendment to its copyright laws to implement two copyright related agreements negotiated under the auspices of the World Intellectual Property Organization (WIPO) that China has signed but not yet ratified.

Chinese enforcement of copyrights and trademarks is still uneven from province to province. Guangdong province, for example, has recently significantly increased sanctions against piracy and counterfeiting. We are encouraging the national government and/or the other provinces to do likewise. Of concern is the unauthorized use of software by private enterprises (end user piracy). Piracy rates of entertainment software (game compact discs) and other audiovisual products are also very high. Although strong steps have been taken to address the production of pirated software, CDs and VCDs, pirated product remains available at the retail level.

During recent discussions we have also raised the growing problem with trademark counterfeiting, particularly in the area of consumer goods, protection for unregistered well-known

trademarks and effective enforcement against counterfeiters.

Access for foreign sound recordings has improved, but restrictions on distribution remain a key concern. Although imports of foreign video titles have increased rapidly, the Chinese still impose an unofficial quota on foreign motion pictures that are distributed on a revenue sharing basis. China maintains this limit through a state-owned import monopoly.

China committed in its November 1999 WTO accession agreement to increase market access for the audiovisual sector. China will allow foreigners to distribute videos, entertainment software and sound recordings through joint ventures, and will allow the importation of 20 motion pictures annually on a revenue sharing basis.

5. 1992 Market Access Agreement

The United States and China signed a Memorandum of Understanding on Market Access in 1992. This Agreement committed China to changes in its import regime implemented over a five-year period, including increased transparency, elimination of quotas and licenses, a guarantee that no trade law or regulation could be enforced unless published, uniform application of trade rules, elimination of import substitution policies and agreement that any sanitary and phytosanitary measures would be based on sound science. While China has phased-out formal measures, such as quotas and licenses, non-uniform application of trade rules, import substitution policies and use of sanitary and phytosanitary (SPS) standards to restrict imports remain serious problems. The more comprehensive bilateral agreement on WTO accession reached in November 1999 will address many of these issues when China becomes a WTO Member. In addition, the 1999 Bilateral Agricultural Cooperation Agreement resolved SPS issues related to wheat and other grain from the Pacific Northwest, meat and poultry and

citrus. (See separate sections on these Agreements).

These efforts to increase market access for U.S. goods exported to China are having beneficial results. In 1999, U.S. exports to China were slightly more than \$13 billion, an increase of 76.8 percent since 1992, although down in 1999 due to a slowdown in the Chinese economy. Estimated jobs supported by goods exports to China increased from an estimated 113,000 in 1992 to an estimated 180,000 in 1998 (latest data available) or 60.6 percent.

6. Satellite Launch Services

On March 13, 1995, the United States and China agreed to extend the 1989 Bilateral Agreement on International Trade in Commercial Space Launch Services. This Agreement is intended to balance the interests of the U.S. satellite and commercial space launch industries, while encouraging free trade by allowing China to enter the international market for commercial space launch services in a fair and non-disruptive manner. The extended Agreement covers the period from 1995 through 2001 and continues quantitative and pricing disciplines established under the earlier bilateral space launch services Agreement. The renewed Agreement initially limits China to fifteen launches over this time period. An increase in the Geosynchronous Earth Orbit (GEO) launch limit, up to a potential of twenty launches, may be triggered as a result of stronger than predicted growth for GEO launch services. With respect to the Low Earth Orbit (LEO) satellite launch market, the Agreement requires that China's participation in this market segment be proportionate and non-disruptive. Both the GEO and LEO launches are to be priced on a par with other Western providers. The space launch services Agreement specifically provides that nothing in the Agreement limits the operation of U.S. export control laws.

As a result of a 1997 determination that the pricing terms of one of the contracts for a GEO

launch was not consistent with the provisions of the Agreement, the United States decided not to consider exercising any discretionary increase in the limitation on GEO launches provided for in the Agreement beyond the original fifteen. The United States continues to monitor the prices, terms and conditions offered by Chinese launch services providers in international commercial competitions.

In November 1999, China and the United States held informal consultations to determine a schedule and the agenda for upcoming annual consultations under the terms of the Agreement. Agenda items include an overview of the world satellite launch market, new developments in China's commercial space industry, and a review of the implementation of the Agreement. China will provide information on one new launch contract that was signed by its launch provider in 1999, so that the United States may determine if the prices, terms, and conditions of that contract comply with the provisions of the Agreement.

From 1995 through 1999, China performed six GEO launches under the extended Agreement quota. Chinese launch providers conducted one commercial LEO launch and no GEO Launches in 1999, for a 3 percent share of the worldwide commercial launch services market. U.S. launch providers conducted 13 commercial launches in 1999, for a 36 percent share of the worldwide commercial launch market.

C. Japan

Overview

Opening Japan's market to U.S. goods and services has been a top priority for the Clinton Administration and our multifaceted strategy has helped boost U.S. exports to Japan by 20 percent in the past seven years. The central element of U.S. market opening efforts has been the United States-Japan Framework for a New Economic Partnership ("Framework Agreement"), which recognized the necessity of simultaneously

addressing sector-specific market access barriers, cross-cutting structural issues, and macroeconomic issues in order to make meaningful progress in opening Japan's market. The Framework Agreement and other bilateral and multilateral negotiations have led to the conclusion of 38 market-opening agreements with Japan, which the Administration continues to vigorously monitor and enforce. These agreements and the Administration's monitoring and enforcement efforts have provided new sales and investment opportunities for U.S. manufacturers, service providers, and farmers and have served to protect intellectual property, which is key to U.S. companies exporting high-technology and other innovative products to Japan.

Highlights of the achievements of this Administration since 1993 include:

- ▶ *Conclusion of 38 market-opening trade agreements with Japan.* Under the Framework Agreement, and through bilateral and multilateral negotiations, the United States has reached a series of agreements with Japan to open its market in a wide range of sectors in which U.S. companies are globally competitive. Significant progress has been made in addressing many longstanding concerns of U.S. exporters, including onerous and opaque regulations, discriminatory standards, unfair government procurement practices, closed distribution systems, and unfair business practices. As a result, U.S. market share has increased substantially since 1993 in a number of sectors, including semiconductors, medical equipment, telecommunications equipment and auto parts.
- ▶ *Agreement on concrete deregulatory actions Japan will take, improving U.S. access to five key sectors.* The Administration has focused on regulatory and competition-related barriers to U.S.

exporters in five key sectors where U.S. producers and service providers are particularly competitive. Under the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy, launched in June 1997, Japan has agreed to implement specific measures in the telecommunications, housing, energy, financial services, and medical devices, and pharmaceutical sectors, as well as to take steps in such structural areas as distribution, competition policy, and transparency. Now in its third year, each year's initiative has built on the achievements of the previous year to ensure continued liberalization and market opening in Japan.

- ▶ *Effective monitoring and enforcement of U.S. trade agreements with Japan.* The Administration is fully committed to the vigorous enforcement of all our agreements with Japan and is prepared to enforce U.S. rights under these agreements, should violations occur. U.S. market opening goals in Japan have been advanced through our strict and active monitoring and enforcement of our trade agreements, including the use of the objective criteria to assess progress under each of the Framework agreements. Regular consultations to measure progress under each agreement and discuss Japanese Government actions to address outstanding U.S. concerns also has been an important feature of this Administration's monitoring and enforcement program. These enforcement efforts have generated significant results on such agreements as cellular phones, insurance, and medical technology.
- ▶ *Enforcement of Japanese commitments through active use of WTO provisions, including dispute settlement.* The United States has effectively used the WTO Dispute Settlement Mechanism to ensure

that Japan fully adheres to its WTO obligations. The United States resolved three important cases it has brought against Japan relating to Japan's discriminatory liquor taxes, its unfairly burdensome and nontransparent requirements on varietal testing requirements for apples and other fruit exported to Japan, and on "retroactive" copyright protection of sound recordings.

1999 Activities

The Clinton Administration continued its intensive efforts in 1999 to improve market access for U.S. goods and services, promote urgently-needed structural reform, and support the adoption and successful implementation of pro-competitive mechanisms throughout the Japanese economy. While the Japanese Government has taken some positive macroeconomic steps during the past year, the economic downturn has persisted, reducing economic activity in Japan and inhibiting imports into the Japanese market. The Administration has strongly urged Japan to take additional steps to open and deregulate its market, which would help revitalize its economy and generate sustainable economic growth in the medium- and longer-term.

The Clinton Administration placed a high priority in 1999 on further market opening efforts in Japan, reaching three new trade agreements. The United States and Japan announced in May 1999 a package of new deregulation measures to be taken by the Government of Japan in the five sectors covered under the U.S.-Japan Enhanced Initiative on Deregulation and Competition Policy, which address specific market access concerns of U.S. exporters. The U.S. Government also successfully concluded a new bilateral procurement agreement in July 1999 that calls for open, non-discriminatory, and transparent procurement by the four successor Nippon Telegraph and Telephone (NTT) companies, created upon the restructuring of NTT. Together, these companies constitute Japan's largest telecommunications

equipment procuring entity. The United States and Japan also issued an investment report in April 1999 highlighting agreed-upon measures to reform Japan's structural and regulatory policies, which will ultimately improve the investment climate for U.S. firms in Japan.

In addition to these new agreements, the Administration dedicated substantial resources to monitoring and enforcing the 38 market-opening trade agreements concluded with Japan since 1993, particularly insurance, flat glass, autos and auto parts, and government procurement. Conclusion of these agreements and the Administration's vigorous enforcement efforts led U.S. exports to Japan to increase by more than one-third between 1993-1997, with exports in these sectors growing twice as fast as overall exports to Japan. The Administration's commitment to enhancing access into Japan's agricultural market also has paid off; U.S. rice exports to Japan rose significantly, with U.S. rice accounting for 48 percent of total rice imports into Japan in 1999 and U.S. tomato exports to Japan increased ten-fold in the past two years. In addition, Japan approved the importation of several additional types of U.S. apples and cherries in 1999. While Japan's economic slowdown has interrupted progress in many sectors over the past couple of years, the Administration remains committed to close monitoring of our trade agreements with Japan to ensure that U.S. rights under these agreements are enforced and that the U.S. exporters are well positioned to compete in Japan once the economy recovers.

Steel issues were a major concern in 1999. In 1998, steel imports from Japan rose by 164 percent, accounting for 41 percent of the overall U.S. steel import growth. In response, President Clinton sent a report to Congress in January 1999 stating his expectation that Japan's exports would return to appropriate pre-crisis levels in 1999. The Administration also established a bilateral dialogue in September 1999 to discuss steel issues in order to address the policies and practices that

led to the import surge. While U.S. steel imports from Japan fell 54 percent in 1999 over the previous year, the Administration is continuing to monitor import levels closely.

The United States also relied on a wide range of regional and multilateral fora, including the WTO and APEC to achieve the Administration's market opening goals in Japan. The Administration is working to ensure that our work in these fora, including on agriculture and services, are well coordinated with our bilateral agenda so that the various initiatives are mutually reinforcing.

The highlights of our 1999 bilateral and multilateral trade agenda with Japan follows.

1. Overview of Accomplishments 1999

The United States continued to secure further progress in promoting much-needed comprehensive deregulation in Japan in 1999, simultaneously obtaining improved access for U.S. goods and services. In May, under the Enhanced Initiative on Deregulation and Competition Policy (Enhanced Initiative), Japan agreed to take additional deregulatory steps in the telecommunications, housing, financial services, medical devices/pharmaceutical products, and energy sectors. In addition, Japan unveiled specific measures to address structural concerns relating to cross-cutting competition policy, distribution, and transparency issues. Both Governments agreed to continue bilateral deregulation discussions for a third year, setting March 31, 2000 as the target date for the issuance of a Third Joint Status Report detailing new deregulation measures designed to further open Japan's economy and increase market access for U.S. and other foreign firms. The United States submitted to Japan in October a 45-page set of proposals calling on Japan to adopt bold regulatory reforms in key sectoral and structural areas of the Japanese economy. One highlight of this submission includes the recommendation that Japan adopt a "Telecommunications Big Bang" dedicated to fundamentally re-orienting Japan's

telecommunications policies and regulatory framework to the needs of a competitive, digital era. The United States continues to press Japan to fully implement, as well as to expand upon, the deregulation measures agreed to in 1998.

The United States also successfully negotiated a new NTT Procurement Agreement in July 1999, which covers each of the four newly restructured NTT companies. In addition, it secures continued foreign access to Japan's telecommunications market, given that, together, these companies are Japan's largest purchaser of telecommunications equipment. The new two-year agreement provides for continued government oversight and data collection to monitor progress, and ensures that the four successor NTT companies continue to adhere to open, transparent, and non-discriminatory procurement procedures.

In April 1999, the U.S. and Japan issued a follow-up report to the 1995 U.S.-Japan Investment Arrangement, which aims to boost Japan's traditionally low levels of inward foreign direct investment. The report focuses on policy changes in three areas considered particularly vital to creating a more dynamic direct investment environment in Japan: (1) developing a more active and efficient market for mergers and acquisitions; (2) improving land market liquidity; and (3) increasing the flexibility of Japan's labor markets.

The Clinton Administration continued to place a high priority on steel trade policies in 1999. In January, President Clinton issued a report to Congress noting his expectation that steel imports from Japan would return to appropriate pre-crisis levels in 1999 – a message echoed repeatedly by senior U.S. officials during meetings with the Japanese Government throughout the past year. The Administration has since announced its intent to monitor steel imports from Japan on a monthly basis, and stated that it stands ready, if necessary, to self-initiate trade actions under U.S. safeguards and antidumping laws, in order to ensure that steel imports from Japan return to the pre-crisis level.

The Administration also launched under the President's Steel Action Program a bilateral consultative mechanism to address a broad range of anticompetitive policies and practices in this sector. The first meeting under this bilateral dialogue was held in November.

Further, the Administration focused considerable time and resources in 1999 on the monitoring and enforcement of existing agreements to ensure their successful implementation. U.S. Government officials met with their Japanese counterparts throughout the year to discuss progress and implementation problems under a range of bilateral agreements, including: autos and auto parts, insurance, flat glass, government procurement of computers, medical technology, telecommunications, and construction.

In June 1999, the Administration released its second semi-annual film monitoring report which assessed Japan's implementation of the representations it made to the WTO regarding the openness of its photographic film and paper market. The report recognized and welcomed some of the pro-competitive measures implemented by the Japanese Government such as improvements in the application of the Premiums Law, thereby blocking its use to restrict competition. The report also underscored the need for additional progress to open Japan's photographic film and paper market and address business practices that unreasonably restrain trade in this sector.

Finally, the United States continued to use the WTO Dispute Settlement Understanding to address market access barriers in Japan. The WTO Appellate Body in February 1999 upheld a WTO dispute panel ruling that found in favor of the United States in a case against Japan's unfairly burdensome and discriminatory requirements on varietal testing of fruits exported to Japan. The United States and Japan continue to consult on Japan's implementation of the rulings and recommendations.

2. Deregulation

The Enhanced Initiative, announced by the President and Prime Minister in June 1997 at the Denver G-8 Summit, established a bilateral forum for addressing deregulation and market access issues in Japan. Initially, the Enhanced Initiative focused on addressing market access and regulatory issues in four important sectors: (1) Telecommunications; (2) Housing; (3) Financial Services; and (4) Medical Devices and Pharmaceuticals. These sectors were chosen because of their economic importance to U.S. industry, as well as their effect upon the overall global competitiveness of U.S. companies operating in these sectors. The Enhanced Initiative also addresses the critical cross-cutting structural issues of Competition Policy, Distribution, Transparency, and Other Government Practices and Legal Services. On May 15, 1998, President Clinton and then-Prime Minister Hashimoto announced in Birmingham, U.K. the First Joint Status Report under the Enhanced Initiative. This report documents the deregulation measures Japan agreed to take in a number of key sectoral and structural issues during the Enhanced Initiative's first year. In addition, at Birmingham, the energy sector was added to this list of sectors to be addressed.

A Second Joint Status Report was concluded in May 1999, which built on the accomplishments achieved at Birmingham. Recognizing that deregulation is an ongoing process, the United States transmitted to Japan in October 1999 a 45-page submission, which called on Japan to adopt bold regulatory reforms to further open Japan's economy and increase market access for U.S. and other foreign firms. Highlights of the achievements in 1999, and key U.S. proposals for further progress in 2000, are as follows:

a. Sectoral Deregulation

Telecommunications: The absence of policies to expand market opportunities for new entrants in Japan's \$128 billion telecommunications services

market has stifled competition and slowed growth in Japan's information infrastructure. As a result, new investment in this sector is declining and persistently high telecommunications rates are crippling Internet usage and electronic commerce.

Under the second year of the Enhanced Initiative, Japan agreed to develop a model to bring rates that telecommunications carriers must pay to connect to Japan's local telecommunications network (interconnection rates) to competitive, market-based levels. An initial model, based on long run incremental costs (LRIC), was completed in 1999. This initial model was a first step in determining competitive interconnection rates for Japan. Since this model failed to fully eliminate unnecessary costs, however, revisions are necessary, which Japan has agreed to consider. Japan pledged to set rates based on this methodology in the year 2000.

In 1999, Japan also agreed to develop guidelines to ensure that telephone carriers face minimal restrictions on choices of how to build a network, using combinations of leased and owned facilities. Since such flexibility is key to rapidly building a network, the changes are expected to improve competitive opportunities in Japan. The Ministry of Posts and Telecommunications is currently developing such guidelines in conjunction with a public comment process.

Japan also committed in 1999 to ensuring that NTT's retail pricing of services, relative to interconnection rates, does not impair competition. Such a move would prohibit NTT from pricing services below the costs competitors faced, based on their need to interconnect with NTT. The Ministry of Posts and Telecommunications asserts that it will use this standard to evaluate NTT's retail and interconnection rates, but it has yet to take concrete actions based on this commitment.

Other measures Japan took in the context of the Enhanced Initiative included authorizing interconnection "clearinghouses" to facilitate

interconnection among multiple carriers; opening the cable TV sector to one hundred percent foreign investment (up from 33 percent); and removing restrictions on the use of internal electrical wiring for communications devices. All of these measures will contribute to expanded market opportunities for U.S. firms.

In its October 1999 deregulation submission, the U.S. Government called on Japan to adopt a "Telecommunications Big Bang," dedicated to fundamentally re-orienting Japan's telecommunications policies and regulatory framework to the needs of a competitive, digital era. Additional areas in which the United States requested Japanese action include measures to ensure effective access to rights-of-way controlled by NTT, ministries, and utilities, and requirements that NTT "unbundle" subscriber lines and other network elements and lease them to competitors at cost-based rates. This would allow competitors to bypass the economic and technological inefficiencies of the NTT network but still reach customers NTT currently controls. The United States also proposed a comprehensive shift in Japan towards lighter regulation of competitors and more stringent regulation of NTT, particularly in the area of retail pricing, where NTT appears to be engaging in anti-competitive conduct.

Housing: The housing experts working group under the Enhanced Initiative met in February and December of 1999. The group promotes improved market access in Japan for foreign suppliers of wood and building products. Achievement of this objective and increased reliance on performance-based standards by Japan will increase opportunities for American exporters and encourage the construction of higher quality, safer, and more affordable housing in Japan.

U.S. efforts on this front have led to several significant changes. For example, Japan's adoption of Public Comment Procedures will make it easier for U.S. building materials suppliers to participate in the formulation and implementation of revisions to Japan's Building

Standard Law, the cornerstone of Japan's national housing policy. Japan also agreed to implement performance-based standards for three-story, multi-family wood housing, and to participate with the U.S. government in a series of jointly sponsored seminars that will help build the market for U.S.-style building materials and methods.

In its October 1999 deregulation submission, the United States' proposals focused on structural weaknesses in the sector that inhibit the development of quality rental housing and resale and renovation markets. The United States also proposed deregulation of some specific product areas, such as food waste disposers and interior finish products, so that Japanese consumers may enjoy the functional features in their homes that are commonplace in other industrialized countries. Finally, the U.S. continues to advocate additional liberalization in the forest products sector, such as implementation of performance-based building standards for certain four-story wood frame buildings.

Another longstanding U.S. objective in Japan has been the elimination of tariffs on value-added wood products. At the November 1998 APEC Summit, APEC economies, including Japan, agreed to: (1) participate in WTO negotiations on the tariff elements of the sectoral initiatives (the Accelerated Tariff Initiative, or ATL) developed by APEC, including forest products (which covers wood, paper, printed materials and wood furniture); and (2) seek conclusion of a WTO Agreement in 1999, which would lead to the phase-out of tariffs for wood products by 2004. Although no agreement was reached on the ATL initiative because Trade Ministers did not agree to launch a new Round of WTO trade negotiations, the United States intends to keep pressing for ATL in the context of launching the new trade round.

Financial Services: Japan's pool of individual and institutional savings – valued at some \$10 trillion – is the largest outside the United States. The Japanese Government's proposed "Big Bang"

liberalization of its financial services industry should substantially improve the ability of foreign financial services providers to reach customers in most segments of the Japanese financial system.

Among the more important measures being implemented under the "Big Bang" initiative are those allowing new products (liberalizing securities derivatives, promoting a more vigorous asset-backed securities market, and introducing defined contribution pension plans), increasing competition (liberalizing foreign exchange trading, easing the registration process for new securities companies, allowing cross entry among financial industry segments, and liberalizing trading commissions), and enhancing accounting and disclosure standards (including consolidated accounting, and mark-to-market recording of financial assets).

The United States welcomes Japan's successful implementation of the measures contained in the 1995 U.S.-Japan Agreement on Measures Regarding Financial Services, as well as Japan's actions taken to date under its "Big Bang" financial deregulation initiative. Full and effective regulatory reform of Japan's financial markets will increase competition, help improve Japan's long-term growth prospects and contribute to a wider variety of investment opportunities for individuals and Japanese companies.

In the past year, Japan has eliminated taxes on securities transactions, fully liberalized brokerage commissions, and allowed issuance of bonds by banks and non-bank financial institutions. Special purpose corporations (SPCs) and services companies have been authorized, and although some restrictions remain, an asset-backed securities market has begun to develop. The requirement to convert pension fund holding into cash when switching fund managers was eliminated for one of the major types of employee pension plans, and a phased elimination has begun for the other major type. In a move long sought by the U.S. Government and industry, the Government of Japan plans to introduce

legislation this spring that would eventually allow direct management of public pension funds by investment management companies, and also eliminate the cashing requirement on switching fund managers. Legislation also is expected this spring that would authorize defined contribution pension plans.

The United States is urging Japan to implement its defined contribution plans in a such a manner as to create a viable pension alternative, one that provides full scope for competition in investment product offering and plan administration services. In addition, the United States has stressed the importance of improving transparency in the financial services sector by: (1) fully utilizing the notice and comment procedures for all new regulations, and providing sufficient time between finalization of regulatory changes and implementation to allow industry sufficient time to undertake necessary organizational, operational and systems-related changes; and (2) continuing to move toward a clear and consistent regulatory and supervisory system for financial institutions in line with international standards and best practice.

Medical Device/Pharmaceutical/Nutritional Supplement Products: Pursuing deregulation measures in Japan that will enhance the market access of U.S. medical devices, pharmaceuticals, and nutritional supplements is a priority of the Administration. These industries are large employers of U.S. workers and as a sector generate billions of dollars in sales in Japan. In the Second Joint Status Report, Japan agreed to a variety of measures, which in the pharmaceutical sector alone, U.S. industry estimates will result in savings of \$75 to \$125 million per newly introduced product.

In the Second Joint Status Report, Japan agreed to recognize the role of the market, as well as the value of innovation, as it continues to study pharmaceutical pricing reform. Consistent with this understanding, the Japanese Government abandoned plans to introduce a reference pricing system for pharmaceuticals under its national

health care system on April 1, 2000 that would have capped prices for categories of drugs, regardless of product improvements. Such a system would have acted as a disincentive to U.S. manufacturers of cutting edge pharmaceutical products. Japan also agreed to develop and implement a transparent and expeditious process to create new reimbursement categories tailored to today's technologies within Japanese Fiscal Year (JFY) 2000, which will more appropriately reward improved medical devices that offer superior functions. Since U.S. medical device firms currently sell over \$5.5 billion of equipment in Japan's \$20 billion medical device market each year, faster introduction of innovative products means increased access for American firms.

Japan's approvals of innovative medical devices and pharmaceuticals often lag far behind those of other industrialized countries. In 1998, Japan agreed to specific measures to shorten the approval processing period for new drug applications to 12 months by April 2000. In addition, Japan agreed to further expand the acceptance of foreign clinical data in the medical device and pharmaceutical approval processes and no longer require the publication or presentation of clinical data as a prerequisite for use. These steps should significantly enhance transparency, reduce costs and speed introduction of new medical devices and pharmaceutical products. Japan also agreed to promote the liberalization of nutritional supplements by treating such products as foods to the greatest extent possible.

The United States put forward several specific proposals to speed the approval and reimbursement of innovative medical devices, pharmaceuticals, and nutritional supplements in its October 1999 deregulation submission to Japan. The United States requested that Japan: (1) take all necessary steps to ensure that any medical device and/or pharmaceutical price setting mechanism, including any authority, be free from conflicts of interest, be based on global scientific standards, be fully transparent, and include an appeals mechanism; (2) undertake

measures to improve the consistency and speed of the approval process for medical devices; (3) steadily expedite the new drug approval process; (4) continue to expand the usage of foreign clinical data in the approval and reimbursement processes of medical devices and pharmaceuticals; and (5) continue to promote liberalization of the Japanese nutritional supplements market.

Energy: The United States and Japan established a new working group on energy deregulation in 1998. The purpose of this group is to advance Japan's efforts to deregulate its electricity and natural gas sectors market and reduce energy costs, which are the highest in the industrialized world, and to enhance foreign access to this market. In the Second Joint Status Report, Japan agreed to implement a variety of concrete deregulatory measures, which are expected to generate tangible results for U.S. firms. Japan agreed to amend its Electric Utility Industry Law to shift from a permit and approval system to a notification system for construction or upgrading of all power generating facilities. This change will encourage the development of new generating capacity at a time when Japan is opening its \$150 billion electric utility sector to competition. Japan also agreed to simplify regulations and work toward harmonization of various Japanese standards with international standards for energy-related equipment, such as turbines, compressors, and standby generator sets – equipment in which U.S. companies are particularly competitive. In addition, Japan agreed to work toward the harmonization of its standards regarding self-serve gas pumps with international standards.

In October 1999, the United States put forward specific proposals designed to assist Japan in making the successful transition from a monopolistic to a competitive energy market by: (1) reducing regulatory and other barriers that discourage investment and market entry; (2) implementing appropriate incentives and disciplines for pro-competitive behavior; and (3) providing for full transparency in setting and

implementing rules and procedures so that appropriate and fair rules are set and rational business decisions can be made. The United States and Japan met in November 1999 to discuss these proposals and Japan's plans to liberalize its electricity sector beginning on March 21, 2000. During these meeting, the United States raised competition-related concerns regarding Japan's plans, which are based on U.S. and worldwide experience in this area. The U.S. Government further detailed these concerns in public comments it submitted to Japan on November 19, 1999 regarding draft reports and ordinances on electricity deregulation.

Legal Services: Japan's legal service infrastructure must be capable of meeting the needs of Japanese and foreign persons and enterprises that are responding to the opportunities created by market liberalization and deregulation. Currently, barriers thwart the development of a legal services sector and prevent Japanese and foreign persons and enterprises from obtaining fully integrated transnational legal services for domestic and cross-border transactions. The United States continues to urge Japan to remove these barriers.

In particular, the United States has requested that Japan: (1) remove the prohibition against partnerships between Japanese lawyers (*bengoshi*) and foreign legal consultants (*gaikokuho-jimu-bengoshi* or *gaiben*) and allow them to determine the form of association that will enable them to most efficiently and effectively serve their clients' needs, whether it be partnership, employment or some other form; and (2) permit a foreign lawyer to count all of the time in Japan spent practicing the law of the lawyer's home jurisdiction toward meeting the experience required to register as a *gaiben*, not just the one year allowed under current practice.

b. Structural Deregulation

Distribution: The United States welcomed the passage in 1998 of legislation in Japan abolishing

the Large-Scale Retail Store Law and Japan's agreement to closely monitor local governments' implementation of the Large-Scale Retail Store Location Law, or *Daiten Ricchi Ho*, which will come into effect June 1, 2000. The *Daiten Ricchi Ho* transfers responsibility for the establishment of large stores to prefectural governments and central government-designated cities. The law specifies that large store business activities will no longer be adjusted in order to thwart competition. Instead, the new law restricts review of the establishment and expansion of large stores to environmental factors, such as traffic and noise. The law does not permit local governments to enforce stricter environmental standards than those existing nationally.

In response to requests by the United States, the Ministry of International Trade and Industry (MITI) is undertaking a broad-based educational campaign with local governments to explain their operational and legal responsibilities and limitations to their authority under the *Daiten Ricchi Ho*. Also at the request of the U.S. Government, MITI is establishing a contact point to help resolve complaints from interested parties regarding the application of the new law. The United States has welcomed these steps, but noted that the manner in which Japan implements the *Daiten Ricchi Ho* will determine whether the new law will reduce the regulatory burdens faced by new store openers or whether it will pose an even greater obstacle than the previous regulatory regime. In addition, the United States has urged Japan to take additional actions to ensure that local governments apply the law in a fair, reasonable and uniform manner.

Competition Law and Policy: In the Second Joint Status Report, Japan agreed to implement specific measures to promote and ensure competition within its markets. For example, as part of its effort to prevent private regulation of the market (*min min kisei*) from replacing recently deregulated government rules, an area of serious concern to the United States, the Japan Fair Trade Commission (JFTC) undertook to: (1) eliminate

Antimonopoly Act (AMA)-violative market entry restrictions by trade associations; (2) conduct surveys on economic and business conditions, with a view toward rectifying private restraints of trade uncovered; (3) request government agencies to withdraw and refrain from administrative guidance that supports such anticompetitive conduct; and (4) assist in formulating a model AMA Compliance Program and to establish an AMA consultation network to help ensure that the proposed business plans of firms and trade associations comply with the AMA. In addition, Japan agreed to take certain measures to counteract bid rigging on public works projects, including inserting into the bidding instructions a prohibition against consulting with or disclosing bid prices to other bidders and instituting an agency-wide policy of disclosing the scheduled price (*yotei kakaku*) after the bid results are released.

The United States continues to urge Japan to strengthen its efforts to stamp out anticompetitive practices in its economy. In its October 1999 deregulation submission, the United States recommended that Japan adopt a comprehensive anti-*dango* program that would include a new initiative by the National Police Agency to investigate bid rigging crimes and strong measures against government officials that knowingly provide assistance to bid rigging activities. The United States also advised that Japan augment the JFTC's criminal and administrative investigatory powers and reform the surcharge system to increase its deterrent effect.

The United States also has urged Japan to improve significantly its private remedy system for antimonopoly violations as part of a comprehensive antimonopoly legal regime. To this end, the United States recommended that Japan provide for injunctive remedies in such lawsuits, especially for collusive and monopolistic practices, and improve procedural and evidentiary rules for obtaining damage remedies. In addition, the United States requested that the JFTC take

steps to promote an efficient and competitive distribution sector, including initiating a mechanism for review of Antimonopoly Act compliance plans. In addition, the United States Government has sought assurances that the JFTC will have the opportunity to review all joint applications under the Industry Revitalization Law in order to ensure robust competition in the market.

Transparency and Other Government Practices: In recent years, the Japanese Government has begun to lay the foundation for a more transparent and accountable regulatory system, including through the implementation in 1999 of a Public Comment Procedure, which allows the public to review and comment on draft regulations, and enactment of an information disclosure law. The United States welcomes these measures. However, it believes that additional steps are necessary to achieve the level of transparency and accountability recognized as essential in the 1999 OECD Review of Regulatory Reform in Japan.

In its October 1999 submission, the United States has urged Japan to adopt measures including: (1) the introduction of a government-wide system of regulatory impact analysis, which would require a cost/benefit analysis of proposed regulatory changes with a significant economic impact; and (2) the establishment of a study group to consider the introduction of two new regulatory mechanisms – “No Action Letters” and Letter Rulings, which would increase the transparency, responsiveness and predictability of the regulatory process, while reducing its complexity.

3. Existing Bilateral Agreements: Implementation and Monitoring

a. Insurance

The United States and Japan have concluded two bilateral agreements on insurance. The goal of the first, the 1994 U.S.-Japan Insurance Agreement, is to achieve a substantial increase in market access and sales for foreign insurance providers and

intermediaries in Japan. On December 15, 1996, the United States and Japan announced a second agreement, encompassing a series of supplementary measures to the 1994 insurance agreement. These detailed measures were designed to ensure increased competition, allow greater product innovation and pricing flexibility, lower premiums for Japanese consumers, and increase market access for U.S. and other foreign insurance providers in Japan’s insurance market. The focus of the supplementary measures is on the “primary sectors,” which account for roughly 95 percent of Japan’s insurance market. Among other commitments, Japan agreed to avoid radical change in the “third sector” for a “reasonable period,” following substantial deregulation of the “primary” life and non-life sectors. The third sector includes personal accident, cancer, and hospitalization insurance and comprises five percent of Japan’s overall insurance market. However, this is a segment of the market where foreign insurance providers are particularly competitive.

The most recent official consultations under the two insurance agreements were held in Washington in April 1999. This was the first formal bilateral consultation that involved representatives from the Financial Supervisory Agency (FSA), which was established in June 1998 as an independent regulatory body overseeing financial services regulation, including insurance. The review included an assessment of Japan’s implementation of the provisions of the agreement provisions through use of data provided by the Japanese Government and the objective criteria contained in the agreement. Further, the United States and Japan discussed issues related to product approval, resources and technology, the Policyholder Protection Organization, rating organizations, and administrative and regulatory changes in Japan’s insurance sector. In order to deepen mutual understanding of current and future plans related to the U.S. and Japanese insurance regulatory systems, the United States included a component for regulator-to-regulator discussions during the

April meetings. As a result, representatives from the National Association of Insurance Commissioners participated in the talks.

The steps that Japan initiated in 1997 to deregulate the primary sectors of the insurance market in accordance with the bilateral agreements have yielded important results. Several major U.S. and other foreign insurance companies have entered the market in the past two years, the foreign share of the market has grown significantly, and rate and product competition have increased. However, during the April consultations, the United States raised questions and concerns about Japan's implementation of key provisions of the insurance agreements related to rating organizations' activities and potential "radical changes" occurring in the third sector, such as sales practices involving Group Personal Accidental insurance and sales of third sector products by Japanese firms. In addition, the United States voiced serious lingering concerns over the conduct of product approvals and the transparency of that process. Given continued industry apprehension related to FSA's ability to meet the 90-day turnaround for product approvals mandated in the agreement, the United States urged Japan to make key changes to its product approval system to enable it to operate effectively in the increasingly deregulated insurance environment.

In addition to the bilateral agreements on insurance, in its October 1999 deregulation submission to Japan under the Enhanced Initiative, the United States included an expanded list of requests related to insurance. These requests include: a significant increase in FSA staff to deal with the expanding flow of insurance product applications; Japan's adoption of a modernized and a stream-lined product approval system; and further efforts by FSA to conduct all communications with the companies it regulates in a fair and transparent manner, as called for in the Administrative Procedures Law (APL). The United States also expressed serious concerns with potential Japanese plans to expand the role of

the government postal insurance system (the "*Kampo*"). The United States pointed out that any expansion of *Kampo* into product lines being offered by private insurers is inconsistent with Japan's goals of deregulation and "Big Bang" market reforms. The United States also expressed concern that *Kampo* falls outside the scope of the Insurance Business Law and is not subject to oversight by FSA or the JFTC. These items were discussed during a meeting of the deregulation structural working group in November 1999, when the United States emphasized that we view Japan's adoption of these requests as a key step toward moving forward on our insurance agenda with Japan.

The next set of insurance consultations will be held in March 2000, when we will seek to narrow our differences with Japan on outstanding issues.

b. Flat Glass

In January 1995, the United States and Japan concluded an agreement aimed at opening the Japanese market to imported flat glass. Japan's \$4.9 billion flat glass market had been dominated by an oligopoly of three large producers. Since the late 1960s, these producers changed prices, capacity, and product mix in virtual lockstep, and their respective market shares have remained effectively unchanged. Despite their intensive efforts, U.S. firms have been unable to penetrate this difficult market.

Under the Flat Glass Agreement, Japanese firms undertook a variety of measures to assure that foreign glass was afforded full access to the distribution network. The Government of Japan also committed in the Agreement to prevent and eliminate anticompetitive practices in the flat glass sector; encourage non-discriminatory procurement of flat glass for public works projects; and promote the use of insulated and safety glass, product categories in which American companies have superior products.

MITI agreed to undertake an annual survey under the Agreement to assess the openness of the distribution system.

The Agreement achieved some important successes. For example, it resulted in Japan's adoption of energy conservation standards in the housing sector that are already boosting demand for high-value-added insulating glass, benefitting Japanese and American manufacturers alike. It also prompted Japan to feature American glass in a number of high-profile public works projects.

However, important objectives remain unfulfilled. U.S. and other foreign suppliers enjoy only token access to the distribution network controlled by the three major Japanese glass manufacturers. As a result, in spite of the dedicated efforts of U.S. glass manufacturers, the high quality of their products, and competitive pricing, their small market share has barely changed since the Agreement was signed. These problems were illustrated on December 21, 1999, when the Japan Fair Trade Commission ruled that certain Japanese industry associations and affiliates, including a subsidiary of Japan's largest flat glass manufacturer, unlawfully colluded to intimidate distributors who purchased foreign-manufactured auto replacement glass through price discrimination and other methods.

The Agreement expired on December 31, 1999. In order to address the remaining market access barriers in this sector, the United States and Japan plan to hold government-to-government discussions in March 2000, to be followed by a joint government/industry meeting later in the spring.

c. Autos and Auto Parts

Improving access to Japan's automotive market remains a high priority for the U.S. Government. The Administration committed early on to taking the steps necessary to significantly increase export opportunities to Japan for U.S. auto and auto parts manufacturers. In August 1995, the United States

and Japan reached an Automotive Agreement with the goals of eliminating market access barriers and significantly expanding sales opportunities in this sector. To monitor implementation of the Automotive Agreement, the United States also announced the establishment of an Interagency Enforcement Team, which releases a semi-annual assessment of progress in all areas covered under the agreement.

The latest monitoring report, issued in June 1999, noted that the global automotive industry has entered a period of broad restructuring while Japan's economic downturn has continued. The report stated that current Japanese policies serve to hold back needed changes and preserve the status quo and urged Japan to fully open and deregulate its auto and auto parts sector to facilitate industrial restructuring, foster competition in this market, and generate further progress under the Automotive Agreement.

Japan's economic slump, limited market access, and the weak competitive environment have disproportionately hurt foreign vehicle manufacturers. Overall vehicle sales in Japan have fallen for 35 months as of December 1999, with sales in the market segments in which U.S. manufacturers compete down 8 percent in 1999. During the same period, sales of motor vehicles produced by Ford, General Motors, and Daimler Chrysler in North America declined 20 percent.

In addition, the economic slowdown has inhibited new business investment, compounding the difficulties foreign vehicle manufacturers face in adding new dealerships. In an effort to contend with these economic conditions and position themselves to better compete in the future, U.S. auto companies have consolidated or closed less-profitable dealerships over the past year. However, the continued reluctance of some Japanese dealers to carry foreign vehicles for fear of damaging their long-term relationships with Japanese manufacturers will continue to constrain the ability of U.S. companies to expand their dealership networks. Japan has responded to U.S.

concerns on this issue by seeking to ensure that dealers understand that they are free to carry the product of competing manufacturers, improving the competitive environment somewhat. However, the U.S. Government urged the Japanese Government and Japanese automakers to take further proactive actions to ensure that restrictive business activities in this sector are fully eliminated.

U.S. auto parts exports also declined in 1999 as a result of Japanese Government policies and the protracted economic slowdown. The United States submitted a number of proposals to Japan to open and deregulate its automotive market. Japan responded positively to several proposals, including streamlining the new car registration process and creating a new class of certified mechanics.

The United States further pressed Japan on these automotive issues during the fourth annual review of the Automotive Agreement, held in October. The United States stated that while some progress had been made under the agreement, the Japanese Government needs to take additional concrete measures now that will bear fruit as the Japanese economy improves. To that end, the two sides discussed Japan's progress in implementing earlier proposals made by the United States, as well as new proposals for achieving progress, including additional deregulatory steps, standards-related issues, measures to improve transparency, and actions to enhance competition in this sector. The United States and Japan agreed to continue discussing these proposals and other steps to achieve the goals of the agreement, which expires in December 2000.

d. Government Procurement

Overview: The United States and Japan have concluded bilateral government procurement agreements in the areas of: telecommunications (including an agreement covering Nippon Telegraph and Telephone (NTT) procurement), computers, supercomputers, satellites, medical

technology, and construction/public works. The overall goal of these agreements is to expand Japanese public sector procurement of foreign products and services by addressing traditional Japanese procurement practices which have historically prevented U.S. and other foreign firms from fully and equally participating in the Japanese public sector market. These agreements address, for example, the lack of consistent and equal access to information regarding upcoming procurements; insufficient opportunities to comment on, and participate in, the development of specifications; over-reliance on sole-sourced procurements; use of unique or Japan-specific technical standards as opposed to international standards; and the lack of impartial bid protest systems.

NTT Procurement: On July 1, 1999, the United States and Japan concluded a new NTT procurement agreement that reflects changes brought about by NTT restructuring. On the same day, the restructuring of Nippon Telegraph and Telephone (NTT) into four successor companies – a holding company, two regional companies (NTT East and NTT West), and a long distance/international company (NTT Communications) – went into effect.

The new agreement, which will remain in effect for two years, covers the four NTT successor companies, which together are Japan's largest purchasing entity of telecommunications equipment. It includes a commitment that the NTT companies will conduct their procurement in an open and transparent manner and provide non-discriminatory and competitive opportunities to both domestic and foreign suppliers. Reflecting changes brought about by NTT's restructuring and the changing business environment in which domestic and foreign suppliers and the NTT successor companies are now operating, the agreement outlines three methods of procurement (the traditional "request for proposal" method, a means by which companies with innovative products can approach NTT directly, and a means by which NTT will conduct follow-on purchases)

and provides details on how each will be conducted. The agreement also ensures foreign companies will continue to have equal access to procurement information, provides protection for any proprietary information supplied during the procurement process, and includes a mechanism for protesting unfair bids.

For the duration of the agreement, the United States and Japan will conduct annual reviews to discuss the operation of the new procurement procedures. These annual meetings will also include a discussion of detailed statistics on NTT companies' procurement to be provided by the NTT companies.

The United States views the new agreement as an essential part of opening Japan's telecommunications market to foreign competition. These NTT companies account for about one third of Japan's \$35 billion telecommunications equipment market at the time of restructuring, and remains the most important purchasing entities in this sector. Through their R&D and deployment decisions, the NTT companies have and will continue to set standards that impact the entire market.

The United States expects that procurement of foreign equipment by the NTT successor companies will not only continue to grow, but will move closer to the success foreign firms have achieved in other, more open parts of the Japanese market and telecommunications markets globally. The first annual review under the new NTT Agreement will be held in 2000.

Telecommunications Government Procurement: The Government Procurement Agreement on Telecommunications Products and Services, concluded on October 1, 1994, aims to significantly increase access for, and sales of, foreign products and services. The agreement also includes measures Japan will take to improve and open its procurement process to foreign suppliers, which are intended to improve the transparency and impartiality of the process and to

increase reliance on international standards. Implementation of this agreement is assessed through both quantitative and qualitative criteria.

Under the agreement, the foreign share of the Japanese Government telecommunications procurement market increased from 7 percent in JFY94 to almost 13 percent in JFY95. At the annual bilateral review of the agreement held in April 1999, however, the United States expressed serious concern that the foreign share of the Japanese public telecommunications market had declined to 3.9 percent in JFY97. During the April review, the United States questioned Japan's over-reliance on the use of sole-source tendering, potential under-reporting of procurement data, and failure to report on procurement by all covered entities.

The United States has urged Japan to take concrete actions to correct the low level of Japanese public procurement of highly competitive U.S. and other foreign telecommunications goods and services. The next annual review is scheduled for the spring of 2000.

Computers: The 1992 U.S.-Japan Computer Agreement commits Japan to adopt non-discriminatory and open procurement procedures with the aim of expanding government procurement of foreign computer products and services. The agreement makes procedural improvements in Japan's public sector computer procurement regime, with provisions guaranteeing that: (1) equal access to information and opportunity to participate will be available to all potential bidders; (2) any company that has participated in developing specifications for a procurement will be barred from bidding on that same procurement; (3) sole sourcing will be restricted to exceptional cases justified under the GATT/WTO Agreement on Government Procurement; (4) evaluation of bids will be based upon a range of criteria set forth in the tender documentation; and (5) unfair low bids will be prohibited.

The last annual review of the agreement was held in May 1999. At this review, the Japanese Government presented JFY97 data showing that foreign computer firms held 16.5 percent of the public sector market – a 0.6 percent increase over the previous year.

Given the continued gap between U.S. share of the Japanese private and public sector computer markets, as well as rapid technological advancements in this sector, the United States continued to urge Japan to update and improve the implementation of the Computer Agreement in 1999. To this end, the United States proposed that Japan modernize its procurement system including increased use of the Internet, broaden its use of “overall greatest value methodology” in bid evaluations, and provided advance information to potential bidders on a larger number of upcoming procurements. The Japanese Government recently announced a plan to consolidate Japanese central government procurement announcements and documentation on the Internet. Late in 1999, Japan concluded its preliminary study of the digitization project and announced plans to create a formal committee early in 2000 to finalize plans in this regard. Japan’s eventual goal is to create a single Internet site where all Japanese central government procurement information necessary for bidding for all product categories will be available.

Supercomputers: Under the 1990 Supercomputer Agreement, Japan committed to implement transparent, open, and non-discriminatory procurement procedures and to ensure that procuring entities are able to procure the supercomputer that best enables them to perform their missions.

Results under the 1990 Supercomputer Agreement have been mixed. In JFY93 and JFY94 there was a notable increase in the U.S. share of Japanese public sector supercomputer market, with U.S. firms reaching a 40-45 percent market share. However, this trend has not been sustained. In

JFY98, U.S. firms won only two of fifteen public supercomputer procurements.

To keep pace with the notable advances in technology in this sector, the United States and Japan agreed in an exchange of letters on April 30, 1999, to increase the threshold governing coverage of the Supercomputer Agreement from five billion floating point operation per second (GIGAFLOPS) to fifty GIGAFLOPS. This change went into effect on May 1, 1999.

Medical Technology: The Medical Technology Agreement was concluded in November 1994 with the goal of significantly increasing access and sales of competitive foreign medical technology products and services in the Japanese public sector procurement market.

This agreement has been successful in providing greater market access and sales for foreign suppliers in Japan’s government procurement sector. At the most recent annual review of the agreement, which was held in September 1999, Japan presented data for JFY97 which showed that foreign share rose 4.4 percentage points to 45.6 percent of the market. This increase occurred despite the fact that government spending in this sector shrunk over this same time period. There was also a significant increase in foreign/domestic head to head competition, which rose from 7 percent of contracts in 1996 to 14.7 percent of contracts in 1997.

The United States continues to urge Japan to make further progress in this sector by improving transparency in Japan’s public procurement process and expanding the use of the overall greatest value methodology to include procurement by local and prefectural governments.

Construction/Public Works: There are two public works agreements in effect: the Major Projects Arrangement (MPA), implemented in 1988 and amended in 1991, and the 1994 U.S.-Japan Public Works Agreement, which includes the “Action

Plan on Reform of the Bidding and Contracting Procedures for Public Works” (Action Plan). The MPA was designed to improve access to Japan’s public works market and includes a list of 40 projects in which international cooperation is encouraged. Under the Action Plan, Japan must use open and competitive procedures on procurements valued at or above the thresholds established in the WTO Government Procurement Agreement.

During the June 1998 annual review of the 1991 and 1994 agreements, the United States was disappointed to learn that U.S. firms had won only \$50 million in public works contracts. This fell far short of the \$100 million in contracts won by U.S. firms in public works contracts in 1997. The U.S. share of Japan’s \$250 billion public works market has consistently remained under 1 percent – a troubling fact given the competitiveness of U.S. firms throughout the rest of the world. Because of the lack of progress in this sector, the United States requested special out-of-cycle consultations on the agreements in January 1999 and elevated the July 1999, annual review to the Under Secretary level.

The main concerns of the United States include arbitrary restrictions on joint venture formation for construction projects and the very low number of design/consulting procurements open to foreign firms. During the July 1999 annual review, Japan and the United States agreed to the creation of the U.S.-Japan Construction Cooperation Forum, which is designed to facilitate the formation of joint ventures between U.S. and Japanese construction firms and to make it possible for U.S. firms to participate more fully in Japan’s public works market. The first Forum was held in October 1999, and the next is tentatively scheduled for the spring of 2000. Also in July, the United States explained that we were monitoring three design/consulting initiatives recently undertaken by Japan, and we expected the number of design/consulting procurements open to U.S. firms to increase significantly as a result of these initiatives. The United States learned in July that

U.S. firms had won only \$50 million in public works contracts for the second year in a row. Because of the continued lack of progress, the United States requested special out-of-cycle round of consultations (also at the Under Secretary level) on the agreements in January 2000.

e. Investment

Changing Japanese attitudes toward inward foreign direct investment (FDI), depressed asset values and improvement in the regulatory environment enabled U.S. and other foreign firms to gain significant new footholds in the Japanese economy in 1999, mostly through mergers and acquisitions. Thus, although FDI to Japan remains the lowest among the OECD countries, FDI more than doubled in JFY98 to 1,340 billion yen, or roughly \$12 billion, and a similar figure was achieved after only the first six months of JFY99.

In July 1995, to counter the formidable barriers to foreign firms wishing access to Japan’s economy, the United States and Japan concluded the U.S.-Japan Investment Agreement. The agreement focuses on both structural change and strong government facilitation to attract foreign investment to Japan. In the agreement, Japan committed to: (1) promote investment; (2) implement better tax incentives and financing; (3) improve conditions for foreign participation in mergers and acquisitions; (4) reduce regulatory restrictions on foreign investment; and (5) facilitate efforts by foreign firms to build business ties with Japanese firms. Until recently, however, implementation by Japan of these measures had been “ad hoc” or targeted at sectors of the Japanese economy where there was little incentive for U.S. firms to invest.

In 1999, the United States and Japan agreed on a number of important additional steps for Japan to undertake to facilitate and boost FDI. Key issues addressed included: facilitation of mergers and acquisitions through, among other things, changes to Japanese accounting and taxation systems; the

need for increased land circulation, as Japan's high real estate costs and issues related to land use have historically been a major disincentive to FDI; and discussions about labor mobility at a time of record unemployment in Japan. In April 1999, the United States and Japan submitted to the President and Prime Minister a joint report which reviewed the actions the Japanese Government had taken to facilitate investment and pointed to areas for continued efforts. The report also committed the two Governments to continue work in this important area.

In line with the conclusions of the April report, the Diet passed several laws helpful to investors in 1999. The Securities Exchange Law was modified and now mandates consolidated and market-value accounting for listed firms beginning in JFY00. The Commercial Code was revised and now, for the first time, allows one company to wholly acquire another through stock swaps. Further, the Industrial Revitalization Law was passed, providing tax and credit relief to firms (including foreign investors in Japanese companies) which undertake government-approved reorganization. The new bankruptcy law (Civil Reconstruction Law) encourages business reorganization, including spin-offs, rather than forced liquidation of assets, as previously. In addition, the concept of corporate governance, such as the role of boards of directors, is also changing in ways which augur well for increased investments, mergers and acquisitions. Additionally, the United States has been pleased with the increased interest in foreign investment in Japan at the local level.

Nevertheless, government and business observers from both countries recognize that much more remains to be done. The U.S. and Japanese Governments agreed in 1999 to continue to consult on investment issues and began organizing a jointly-sponsored investment conference for the spring of 2000 which will identify and publicize the need to remove remaining structural and regulatory barriers in order to improve the investment climate in Japan.

4. Sectoral Issues

a. Steel

The U.S. steel industry endured tremendous hardship in 1998 as a sudden and substantial drop in demand for steel in Japan and the rest of Asia created a huge oversupply, which Japanese companies diverted to the U.S. market. Imports from Japan increased 164 percent from 1997 to 1998, making Japan the main source of imports to the U.S. market in 1998. Imports from Japan of steel mill products in 1999 fell 54 percent compared to 1998.

On January 7, 1999, President Clinton sent a report to the Congress, stating, among other things, his expectation that Japan's exports will return to appropriate pre-crisis levels in 1999. The Administration has since closely monitored steel imports from Japan on a monthly basis and stated that it stands ready, if necessary, to self-initiate trade actions under U.S. safeguards and antidumping laws, in order to ensure that steel imports from Japan are rolled back.

In August 1999, the President announced that the Administration would undertake bilateral initiatives with steel exporting nations, including Japan, to address a broad range of unfair practices that support economically unjustifiable capacity. The high-level dialogue was initiated in September 1999 at the Vice Ministerial level. The first working level meeting took place in November 1999. The primary topics of discussions in the first round of meetings were trade patterns, market conditions, and trade policies in Japan. Specifically, the United States focused on learning more about restructuring in the Japanese economy, including how the Industrial Revitalization Law will apply to the steel sector. The United States stressed that in order for restructuring to be successful, Japan needed to encourage domestic and import competition and avoid subsidies.

In 1999, dumping orders were issued against Japan on certain hot-rolled carbon steel flat products and stainless steel sheet and strip in coils. In addition, U.S. steel producers and workers requested Department of Commerce dumping investigations against Japan on cut-to-length carbon-quality steel plate; cold-rolled flat-rolled carbon-quality steel products; structural steel beams; carbon and alloy seamless standard, line, and pressure pipe; certain tin mill products; and stainless steel hollow products.

b. Rice

Japan's highly protected rice market has long been a target for liberalization efforts. During the Uruguay Round, Japan agreed to crack open the door to its domestic rice market by establishing a minimum access commitment for rice imports. Under this agreement, Japan committed to import 379,000 metric tons in 1995/96. This quota was to grow to just over 758,000 tons at the end of the Uruguay Round implementation period (2000/2001). Since the Uruguay Round, the United States has been the single largest foreign supplier of rice to the Japanese market, supplying approximately one-half of total imports.

On April 1, 1999, a new Japanese rice regime went into effect that transformed the existing import quota system into a tariff quota system. Under "tariffication," a specific duty is applied to imports outside of Japanese minimum access rice imports.

The U.S. rice industry has worked assiduously to meet the demands of the Japanese market. In cooperation with its Japanese customers, it has improved its production, handling, and milling techniques for the unique varieties that are produced specifically for the Japanese market. To advance this effort, the U.S. rice industry has actively engaged in technical discussions with Japan. In addition, the U.S. rice industry made tremendous efforts to improve its price

competitiveness under the simultaneous-buy-sell (SBS) tendering system.

In 1999, the United States held a number of discussions with the Japanese Government to examine the effects of Japan's new policies on access to its rice market. Through these talks, the United States conveyed its expectation that the U.S. rice industry would achieve continued access to Japan's rice market in line with that of the past four years. The United States reserved the right to consider, if it deemed appropriate, any and all options with respect to the new Japanese rice regime, including WTO options. At the same time, the United States and Japan agreed to hold periodic consultations on a number of agricultural issues, including access to Japan's rice market. The first such meeting took place September 1999 in Geneva. At that meeting, the United States urged that the Japan Food Agency administer its import system in a transparent manner that would allow U.S. rice exporters to develop effective commercial relationships with end-users in Japan and to give consideration to revising its SBS system so that the market is allowed to function in a normal way.

In line with the U.S. expectation, U.S. producers achieved a 47.9 percent share of Japan's foreign rice purchases in 1999, up slightly from the previous year.

The United States will continue to closely monitor Japan's rice purchases, and will consider all of its options to respond to Japan's policies in the event that circumstances change.

5. Multilateral/WTO Disputes and Settlements

Consumer Photographic Film and Paper: An interagency monitoring and enforcement committee was established in February 1998 to review implementation of formal representations made by Japan to the WTO regarding its efforts to ensure the openness of its market to imports of photographic film and paper. The committee

issued its second semi-annual monitoring report in June 1999, which was based on surveys of the Japanese photographic film and paper market and information and data obtained from U.S. and foreign film manufacturers and the Japanese Government.

Related to Japan's enforcement of the Antimonopoly Law and efforts to promote competition, the JFTC undertook two important steps: (1) warned Japan's Photosensitive Materials Manufacturers Association to cease exchange of data, which could constitute a violation of the Anti-Monopoly Law; and (2) improved the transparency of its application of the Premiums Law, thereby blocking its use to restrict competition. While noting such positive steps undertaken by the JFTC to reduce anti-competitive behavior in the sector during the period surveyed, the report noted that further efforts by Japan were needed to improve the competitive conditions in Japan's photographic film and paper sector.

Further, as large stores are a key sales channel for foreign firms, including film manufacturers, Japan's implementation of the new Large-Scale Retail Store Location Law has been of key interest to the U.S. Government. In the Second Joint Status Report under the Enhanced Initiative, the United States received assurances from the Government of Japan that it will take measures to facilitate the consistent, transparent, and predictable application of the law. In addition, the report noted that, overall, MITI has taken limited action to ensure that the distribution system is open and that Japanese wholesalers and retailers are familiar with the MITI Business Practices Guidelines. The United States urged MITI to be more proactive in this regard.

The monitoring and enforcement committee continues to closely monitor foreign access to this sector and Japan's efforts to open this market in accordance with its WTO representations. The committee will release the next semi-annual film monitoring report in 2000.

Varietal Testing of Fruits: In October 1997, the United States invoked dispute settlement procedures against Japan regarding its varietal testing requirements. Japan required repeated testing of established quarantine treatments each time that a new variety of an already approved commodity was presented for export. This redundant requirement had no scientific basis and, because it imposed expensive and time-consuming testing on American producers, served as a significant barrier to market access. The United States challenged these requirements as inconsistent with Japan's obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement").

The United States prevailed in WTO panel and Appellate Body proceedings which concluded on October 27, 1998, and February 19, 1999, respectively. On March 19, 1999, the WTO Dispute Settlement Body (DSB) adopted the panel and Appellate Body findings that Japan's varietal testing requirement was: (1) maintained without sufficient scientific evidence, in violation of Article 2.2 of the SPS Agreement; (2) not based on a risk assessment, in violation of Article 5.1; and (3) inconsistent with Japan's transparency obligations under paragraph 1 of Annex B, since Japan did not publish its requirements. The United States and Japan have been consulting since that time on Japan's implementation of the DSB's rulings and recommendations.

In addition to the WTO case, the United States last year was concerned with Japan's failure to approve importation of five apple varieties and two cherry varieties, despite U.S. Government testing that demonstrated the effectiveness of quarantine methods used by American producers for each variety. The United States raised its concerns with Japanese officials at senior levels in late 1998 and early 1999. Japan approved these varieties in mid-1999, in time for shipment of the 1999 crop of these U.S. products to Japan.

D. Western Europe

Overview

The U.S. economic relationship (measured as trade plus investment) with Western Europe is the largest and most complex on earth. Due to the size and nature of the transatlantic economic relationship, serious trade issues inevitably arise. Sometimes small in dollar terms, especially compared to the overall value of transatlantic commerce, these issues take on significant importance as potential precedents for broader U.S. trade policies. This is particularly true in the case of U.S. disputes with the EU over EU import policies respecting bananas and beef treated with growth hormones. Despite U.S. WTO victories against the EU's banana regime and the EU's ban on U.S. beef from cattle treated with hormones, the EU has not ended its discriminatory treatment in these areas.

The fifteen member countries of the European Union (EU) together comprise a market of some 370 million consumers with a total gross domestic product of over \$8 trillion. U.S. goods exports to the EU member states totaled \$152 billion in 1999, second only to Canada. Since 1992, U.S. goods exports have increased 41 percent, including a 1.8 percent increase in 1999. Jobs supported by goods exports to the EU have increased from an estimated 1.3 million in 1992 to an estimated 1.4 million in 1998 (latest data available).

From its origins in the 1950s, the EU has grown from six to fifteen member states, with Austria, Finland, and Sweden becoming the newest EU members states on January 1, 1995. The other major trade group within Western Europe is the European Free Trade Association (EFTA), which through 1994 included Austria, Finland, Iceland, Liechtenstein, Norway, Sweden, and Switzerland (Austria, Finland, and Sweden ceased EFTA membership upon their accession to the EU). Formed in 1960, EFTA provides for the elimination of tariffs on manufactured goods and

select agricultural products that originate in, and are traded among, its member states.

In late 1991, the EFTA countries and the EU reached agreement on the formation of a European Economic Area (EEA), designed to strengthen significantly the free trade agreement already in place between the two groups. Switzerland rejected the EEA in a referendum at the end of 1992. A revised EEA (excluding Switzerland) entered into force on January 1, 1994. In practice, the EEA involves adoption by the EFTA signatories of approximately 70 percent of EU legislation.

Highlights of the achievements of this Administration since 1993 include:

- ▶ *Enhancing Transatlantic Economic Cooperation.* At the U.S.-EU Summit of May 1998, the President and his counterpart Leaders from the European Union launched the U.S.-EU Transatlantic Economic Partnership (TEP), which is designed to reduce barriers to bilateral U.S.-EU trade and to improve U.S.-EU cooperation on a range of trade issues. The TEP has three components: (1) negotiations to reduce barriers to bilateral trade in services, industrial goods, and agricultural products; (2) cooperative efforts in the World Trade Organization (WTO) and other international organizations to reduce or eliminate barriers that hinder international trade and capital flows and to address other related issues, such as trade and the environment and support for core labor standards; and (3) efforts to enhance the transatlantic dialogue between business, non-governmental organizations, and governments on trade and investment matters. The TEP will be an on-going process of achieving and implementing results as they occur.

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- *Reducing Unnecessary Barriers to Transatlantic Trade.* The United States and EU concluded a Mutual Recognition Agreement (MRA) in order to improve market access, reduce costs and shorten the time required to market many U.S. products in the EU, while maintaining our current high levels of health, safety and environmental standards. Product sectors covered by the U.S.-EU MRA now represent over \$50 billion in annual two-way trade. The MRA, which entered into force in December 1998, will allow conformity assessment (product tests, inspections, certifications) to be performed in the United States to EU requirements, and vice-versa. When fully implemented, the MRA will eliminate duplicative assessments for products in the following sectors: telecommunications and information technology equipment; network and electromagnetic compatibility (EMC) for electrical products; electrical safety for electrical and electronic products; good manufacturing practices (GMP) for pharmaceutical products; product evaluation for certain medical devices; and safety of recreational craft.

1999 Activities

The EU in 1999 intensified its efforts to deepen the economic and political integration of its member states. The pace of additional western European integrative efforts over the next few years is being set first by the experience of implementing the Economic and Monetary Union (EMU) established by the EU's Maastricht Treaty, which went into force on November 1, 1993, and amendments to Maastricht which emerged from the 1997 EU Intergovernmental Conference (IGC) – the so-called Amsterdam Treaty. Under the Maastricht Treaty schedule, eleven member states on January 1, 1999 launched in earnest the EMU program, the most prominent feature of which is the introduction of the new European single

currency (the “euro”), set to replace national currencies in participating member states by 2002.

The second major factor affecting the pace of European integration will be the process of enlarging the EU to include new members to the East and South. The EU has signed association agreements and other types of free trade arrangements with the Czech Republic, Slovakia, Hungary, Poland, Bulgaria, Romania, Latvia, Lithuania, Estonia, Albania, Slovenia, Israel, Algeria, Morocco, and Tunisia. The EU has also negotiated a customs union with Turkey. In November 1998, the EU formally launched substantive accession negotiations with six “first-tier” candidate countries: Poland, the Czech Republic, Hungary, Slovenia, Estonia and Cyprus. In late 1999, the EU declared it would also begin formal negotiations for accession with Slovakia, Romania, Bulgaria, Lithuania, Latvia and Malta (Turkey remains an accession candidate, with no EU commitment to commence formal negotiations). No firm target has been set for completing any of the accession negotiations, but some candidate states have expressed concern that the process could last for a number of years.

In 1999, USTR devoted considerable resources to addressing pressing or potential trade problems with the EU and its individual member states, as well as to efforts to enhance the transatlantic economic relationship. As part of our ongoing dialogue with the European Union under the TEP, we now have agreement with the EU to launch negotiations on: mutual recognition agreements (MRA) in key services sectors (insurance, engineering and architecture); an additional MRA annex for marine safety equipment; and an agreement on the mutual acceptance of calibration certificates. We also have agreed to establish a pilot project to track biotechnology product approvals simultaneously through our respective regulatory systems. We have continued efforts to reach understandings with the EU that would lead to EU compliance with WTO dispute settlement rulings on bananas and beef and to resolve other bilateral trade problems. In addition, with respect

to the WTO ruling in the Foreign Sales Corporation (FSC) case (see Chapter VI for a fuller discussion of this case), we will work to resolve the situation in a mutually satisfactory manner and to ensure that this issue does not seriously damage our overall bilateral relationship.

The extent of USTR activity on a bilateral basis with respect to the EFTA states in 1999 was modest, though both Norway and Switzerland have made inquiries concerning possibilities for further regulatory cooperation.

1. Transatlantic Economic Partnership

At the May 1998 U.S.-EU Summit in London, President Clinton and EU Leaders announced the Transatlantic Economic Partnership initiative, which seeks to deepen and systematize the cooperation in the trade field launched under the New Transatlantic Agenda process begun in 1995 (see below). In the TEP, the two sides identified a number of broad areas in which they committed to work together in order to increase trade, avoid disputes, address disagreements, remove barriers and achieve mutual interests. These areas include: technical barriers to trade, agriculture, intellectual property, government procurement, services, electronic commerce, environment and labor. In addition, the United States and EU agreed to put an emphasis throughout the initiative on shared values, i.e. they agreed to more fully involve citizens and civil society on both sides of the Atlantic in trade policy so as to strengthen the consensus for open trade. Cooperation under the TEP occurs with respect to bilateral matters, as well as in the context of multilateral activities such as in the WTO. The TEP Action Plan, endorsed by Leaders at the December 1998 U.S.-EU Summit in Washington, lays out specific goals under each of the above categories which the two sides hope to achieve as soon as possible.

Under the TEP in 1999, the United States and EU agreed to establish a project to examine the regulatory processes on each side connected with

the issue of biotechnology. The two sides also agreed to attempt development of common guidelines for cooperation in the regulatory field – an area increasingly seen by the business community as impacting the further deepening of transatlantic commercial ties. In addition, under TEP auspices, the United States and EU will begin negotiating new agreements and other forms of cooperation for mutual recognition of regulatory processes in various industrial and services sectors (see next section). Finally, U.S. and EU leaders agreed at the June 1999 U.S.-EU Summit to use TEP mechanisms to carry out part of a joint effort to identify – and hopefully defuse – potential trade problems at an early stage, before they become irritants to the bilateral economic relationship.

Public Dialogues: Important companions to the Transatlantic Economic Partnership initiative are the various private dialogues among European and American businesses, labor organizations and environmental and consumer groups. The first of these to be established, the Transatlantic Business Dialogue (TABD), is a forum in which American and European business leaders can meet to discuss ways to reduce barriers to U.S.-European trade and investment. Other dialogues – the Transatlantic Labor Dialogue (TALD) and the Transatlantic Consumer Dialogue (TACD), along with the Transatlantic Environment Dialogue (TAED) – start from a similar premise, i.e., that corresponding organizations on both sides of the Atlantic should share views and, where possible, present joint recommendations to governments in both the United States and the EU on how to improve transatlantic relations and to elevate the debate among countries in multilateral fora. All of these dialogues held meetings in 1999, from which emerged a number of recommendations related to trade policy issues. The United States is committed to the full participation of civil society in the trade policy process and intends to cooperate closely with all the dialogues as it works to implement the TEP initiative.

2. Standards, Testing, Labeling, and Certification

A process of harmonization of technical regulations and product standards is underway within the EU. The U.S. Department of Commerce anticipates that EU legislation covering regulated products eventually may affect half of all U.S. exports to Europe. Given this trade pattern, EU legislation and standardization work in the regulated areas is of considerable importance. Although there have been improvements in some respects, a number of problems related to this evolving EU-wide regulatory process continue to cause concerns for U.S. exporters. Among these concerns are: lags in the development of EU standards; lags in the drafting of harmonized legislation for regulated areas; inconsistent application and interpretation by Member States of the legislation that is in place; overlap among directives dealing with specific product areas; gray areas among the scope of various directives; and unclear marking and labeling requirements for these regulated products before they can be placed on the market.

In December 1998, the United States and the EU began implementation of the U.S.-EU Mutual Recognition Agreement (MRA) – in sectors representing over \$50 billion of annual two-way trade. The MRA is designed to reduce duplicative conformity assessment procedures, while maintaining our current high levels of health, safety and environmental protection. Once fully implemented, the MRA will permit U.S. exporters to conduct required conformity assessment procedures (such as product testing and inspection) in the United States according to EU requirements, and vice versa. The sectors covered by the current MRA include: telecommunications and information technology equipment; network and electromagnetic compatibility (EMC) for electrical products; electrical safety for electrical and electronic products; good manufacturing practices (GMP) for pharmaceutical products; product evaluation for certain medical devices; and safety of recreational craft.

In 1999, the United States continued work to enhance regulatory cooperation and reduce unnecessary technical barriers to transatlantic trade. Under the Transatlantic Economic Partnership (TEP), the United States and EU advanced our bilateral regulatory cooperation workplan, including agreement to: negotiate an additional annex to the U.S.-EU MRA on marine safety equipment; complete preparatory work on a possible MRA annex on road safety equipment; and reach an agreement on mutual acceptance of calibration certificates. We aim to conclude these agreements in 2000, as well as to develop jointly agreed guidelines and principles for effective regulatory cooperation and more transparent regulatory procedures. In addition, the TEP will be used to conclude precedent-setting mutual recognition agreements and other cooperation in the services field – beginning with sector-specific negotiations in the areas of insurance, engineering services and architectural services.

3. Telecommunications

Since 1985, the United States has pressed European nations to open their markets to foreign telecommunications equipment. Important items of concern remain, such as the discriminatory procurement policies of some state-owned telecommunications firms. For example, telecommunications administrations in some EU countries still procure their network equipment from domestic national suppliers whenever possible without opening up the process to foreign competition.

The United States is concerned that the EU's adoption of a Common Position on the Introduction of Universal Mobile Telecommunications Services (UMTS) in December 1998 does not adequately reflect the advent of competition under the WTO Basic Telecommunications Agreement, which took effect on February 5, 1998. While the stated intention may be to assure a minimum level of interoperability in Europe, the fact remains that the Common Position confers regulatory certainty

and therefore a market advantage upon the subset of third generation mobile telecommunications technologies eventually authorized by the European Telecommunications Standards Institute to provide UMTS. In accordance with the European Community and Member States' WTO commitments, EC Member States should instead license and assign radio spectrums to the maximum number of service providers without regard to technology, based on the third generation standards that have emerged from industry-led negotiations in the International Telecommunication Union (ITU). (More details on 1999 developments are provided in the Telecommunications section of Chapter VI.)

Europe is in the process of implementing wide-ranging liberalization in its telecommunications services market. The European Community and Member States, with limited exceptions, committed to provide market access, national treatment, and fair regulatory practices as part of the WTO Basic Telecommunications Agreement. Greece, Ireland, Portugal, and Spain made subsector-specific reservations in the WTO agreement, mirroring derogations granted under EU law that permit an extra one to five years before the introduction of competition. Ireland and Spain abandoned these derogations and, as of December 1, 1998, opened their markets to full competition.

The record of implementation under the agreement so far is mixed. Many Member States have begun licensing new entrants, and have begun taking the steps necessary to compel former monopolies to meet pro-competitive obligations set forth in the WTO Agreement. However, some governments have been slow to adopt or put in place the legislative and regulatory mechanisms necessary to implement EU directives. The European Commission's competition directorate, formerly DG-IV, has taken an active stance in bringing actions for noncompliance with EU directives in order to compel implementation.

4. Monitoring of the Large Civil Aircraft Agreement

The United States held formal consultations with the European Commission in March 1999 under the terms of the 1992 U.S.-EU Agreement Concerning the Application of the WTO Agreement on Trade in Civil Aircraft on Trade in Large Civil Aircraft. The Agreement established special limits governing government support to large civil aircraft of 100 seats or more. At the March 1999 meeting, the parties exchanged information under the Agreement's transparency provisions on direct and indirect government support and discussed current developments with respect to government involvement in large civil aircraft manufacture and marketing, such as government launch aid for new Airbus aircraft. The United States made proposals for improving the implementation of the Agreement with respect to transparency and for progressively reducing government support as called for by the Agreement. However, no common basis was found for making progress.

5. EU Banana Regime

In 1997, the United States won two WTO proceedings (an independent WTO panel and the WTO Appellate Body) against the EU's discriminatory banana regime, which has been in effect since 1993. The WTO found that the EU had violated numerous provisions of the GATT and GATS. The WTO determined that the EU had deliberately confiscated a major share of the banana business developed by United States and Latin American companies and transferred it to EU companies and EU domestic banana growers. The WTO also determined that the EU unfairly restricted imports of bananas grown in Latin American countries compared to imports from the EU's former colonies.

In 1999, the United States won a WTO arbitration that determined that the EU banana regime is hurting the U.S. economy by over \$191 million each year – i.e., over \$1.3 billion since 1993 – and

authorized U.S. retaliation, namely imposing 100 percent duties on selected products we import from the EU. The United States took this action after nearly a decade of trying to convince the EU to honor its international trade commitments and after the EU had lost two cases in the GATT.

The WTO rulings against the EU are a victory for U.S. exporters of services and agricultural products. The EU cannot impose discriminatory laws against U.S. service providers (e.g., wireless communication, delivery services) without running afoul of WTO rules. The EU cannot erect agricultural barriers that treat U.S. exports differently than those from other countries without violating its WTO obligations.

U.S. policy consistently has been to press the EU to adopt a WTO-consistent banana regime that also enables the vulnerable Caribbean countries to continue exporting their bananas. U.S. officials have presented the EU several proposals that would do just that, and have coordinated these views with Latin American countries involved in this dispute. The Caribbean countries themselves recently submitted a proposal to the EU that would achieve these twin goals. The United States has endorsed the Caribbean proposal; the EU has not. The United States will continue to press the EU to comply with its WTO obligations, including by intensifying on-going negotiations with the Commission, consultations with EU Member States, and statements in the WTO Dispute Settlement Body.

6. Approval of Biotechnology Products in the EU

EU legislation covering biotechnology has proven to be unpredictable, cumbersome, and non-transparent, and the EU's approval system has ceased to function. While in the past the EU approved several U.S. agri-biotech products, none has been approved since April 1998. In June 1999, some of the EU's Environmental Ministers declared a moratorium on new approvals of agri-biotech products until amendments are completed

to the EU's Directive 90/220, which governs approval of agri-biotech products. The United States has lost \$200 million annually in corn sales since 1998 because of the delay, and additional losses are possible in 2000 because of continued approval delays for other agri-biotech corn varieties.

The United States continues to press concerns about the EU's regulatory processes for approving agri-biotech products and is continuing a dialogue with the EU on these issues. Both sides agreed in late 1998 to use the Transatlantic Economic Partnership to set up a Biotechnology Group to identify and address differences in regulatory processes that delay the approval process in the EU. This Group met periodically during 1999 and will meet again in the spring of 2000. In addition, President Clinton and EU Commission President Prodi agreed to a high-level dialogue to try to address a wide range of issues involving this technology. These senior officials have met twice and plan to meet again in March and April, and regularly thereafter to address these issues, including market access obstacles. U.S. agencies are developing proposals to overcome difficulties in the EU's approval process.

7. Ban on Growth Promoting Hormones in Meat Production

The United States won two WTO proceedings against the EU's ban on U.S. beef, which it imposed due to the use of certain growth promoting hormones in livestock production. Because the EU has insisted on maintaining its 1989 ban on U.S. beef – despite years of international scientific evidence indicating use of the hormones in questions presented no health risk – in 1996 the United States initiated formal WTO dispute settlement proceedings with the EU. In June 1997, an independent WTO panel found in favor of the United States on the basis that the EU's ban on imported meat from animals treated with certain growth-promoting hormones is inconsistent with the EU's obligations under the WTO Agreement on the Application of Sanitary

and Phytosanitary Measures (SPS Agreement). In particular, the panel report affirmed that the EU's ban is not based on a scientific risk assessment. In January 1998, the WTO Appellate Body upheld the panel's finding that the EU's ban on imported meat from animals treated with certain growth-promoting hormones is inconsistent with its obligations under the WTO SPS Agreement.

In 1999, the WTO authorized U.S. trade retaliation because the EU failed to comply with the WTO rulings by the WTO-mandated deadline of May 13, 1999. In July, the United States suspended concessions on \$116.8 million of U.S. imports from the EU after receiving WTO authorization. The U.S. action involved increasing duties to 100 percent on imports of certain products from the EU.

The United States has proposed to the EU ways to provide access for U.S. beef, including labeling U.S. beef and expansion of the EU's non-hormone beef quota, as a temporary measure while the EU is taking the necessary steps to comply with the WTO. U.S. and EU officials are assessing whether the latter approach is feasible; if so, negotiations would begin in the spring of 2000.

8. Veterinary Equivalence

As a part of the Single Market initiative, the EU harmonized its animal and public health standards among Member States. In harmonizing these standards, the EU introduced new import controls for animal and animal products that threatened to disrupt U.S. exports to the EU. On April 30, 1997, USDA Secretary Glickman announced that the United States and the European Union had reached an agreement on an overall framework for recognizing each other's veterinary inspection systems as equivalent. The agreement is expected to open new opportunities for red meat exports and preserve most pre-existing trade in products such as pet food, dairy and egg products. Without this agreement, U.S. exports of some products, including egg products and dairy products, would have been blocked from the EU market unless

U.S. industries invested in costly adjustments to their facilities to comply with each EU internal market requirement. The agreement was signed on July 20, 1999 and became effective on August 1. The two parties are now consulting on ways to implement the agreement, which covers more than \$1.5 billion in U.S. animal and animal product exports to the EU and an equal value of EU exports to the United States.

While conditions for trading poultry and poultry products will be less restrictive under the agreement, U.S. poultry plants using certain anti-microbial treatment are not able to ship to the EU. The EU will not accept our use of certain anti-microbial treatments such as chlorine despite the fact that such treatments are an important element in modern poultry and red meat processing. The United States continues to explore ways of resolving this issue in connection with its overall review of implementation of the Equivalence Agreement.

9. EC Communications on Food Safety and the Precautionary Principle

In January and February 2000, the European Commission (EC) published two papers: "White Paper on Food Safety" and "Communication on the Precautionary Principle."

The paper on food safety describes a new European Food Authority to be established in 2002. Although it will lack regulatory authority, it will provide scientific advice to the EC and the European Parliament by virtue of its analysis. The United States plans to review this new institution to identify new opportunities to exchange experiences and information on the application of science-based approaches to assure food safety.

The communication on the precautionary principle is a document purporting to define the concept of the "Precautionary Principle" (i.e., the idea that scientific uncertainty should not keep a country from exercising precaution to protect the environment, human, animal and plant health and

life). The purpose of the document is to inform all interested parties on how the EC intends to apply this concept and to establish guidelines for the use of its version of the principle.

During 1999, precaution as a topic has been under discussion in numerous international fora, including the Codex Committee on General Principle, the Codex Committee on Food Import and Export Inspection and Certification Systems and the Organization for Economic Cooperation and Development ad hoc Group on Food Safety. This international dialogue is expected to continue well into 2000. The United States plans to review the EC's perspective on this important, complex topic, including its implications for a new European Food Authority.

The United States understands the European Commission's interest in developing guidance for its Member States on the uniform application of precaution across the European Union in matters relating to the protection of the environment, plant, animal and human health and life. But, like the EC, we agree that the term "precaution" must not be used as a guise for trade protectionism.

Given that regulators often have to act on the frontiers of knowledge and in the absence of full scientific certainty, precaution has been an essential element of the U.S. regulatory system for food and environmental safety, manufacturing, construction, and production, since before the turn of the last century. We believe that precaution must be exercised as part of a science-based approach to regulation, not a substitute for that approach, in order to provide the highest level of consumer and environmental protection.

We continue to seek ways to improve this protection – nationally and internationally.

10. Specified Risk Material Ban

On July 30, 1997, the European Commission adopted Commission Decision 97/534/EU, commonly known as the Specified Risk Material

(SRM) ban. However, the decision has not been implemented. The goal of the ban is to avoid health risks related to Transmissible Spongiform Encephalopathies (TSEs), such as, Bovine Spongiform Encephalopathy (BSE or "mad cow disease") or new variant Cruetzfeld-Jakob Disease (nvCJD). The ban prohibits the use of specified risk materials (defined as the skull, including the brain and eyes, tonsils, and spinal cord of cattle, sheep and goats aged over one year and the spleens of sheep and goats) in any products sold in the European market.

If implemented as currently written, the Decision could unnecessarily result in shortages of critical medications in Europe and cause significant disruption of international trade. The Decision threatens U.S. exports to the EU of pharmaceuticals, cosmetics, gelatin, tallow and its derivatives, pet food and many other food and consumer products. The estimated trade impact for the United States exceeds \$4 billion in exports; sales of products manufactured in Europe by U.S. companies also may be affected. In addition to the trade impact, U.S. public health agencies are concerned that the measure would cause international shortages of needed pharmaceutical products containing gelatin and tallow, adversely affecting public health.

The United States continues to press the EU for an exemption from the SRM ban based on the fact that BSE does not exist in the United States, and that U.S.-sourced products are therefore safe. A new proposal was put forth by the Commission in December 1999, which would replace the prior SRM ban decision (97/534). The new decision does differentiate between high-risk and low-risk animal products and takes into account the level of BSE incidence in the Member State or third country of origin. The EU delayed implementation of its SRM ban several times with the most recent being to July 1, 2000. During these delays, the EU was working to amend the ban to avoid a public health crisis and unnecessary trade disruption.

11. Wine

U.S.-EU wine negotiations were successfully launched in 1999 following several years of discussions concerning various market access problems. The negotiations became possible when, in response to U.S. insistence, the EC Council in December 1998 approved an extension of the existing derogations for U.S. wine making practices for 5 years or until an agreement is reached, whichever comes first. EC Commission and United States' negotiators met three times in 1999, gaining valuable information about each other's regulatory systems for wine that will help them achieve a bilateral agreement. Negotiations will continue in 2000 with the next meeting planned for mid-March. The United States continues to be concerned about the EU's requirements for the review and approval of wine making practices, and has questioned the EU's export subsidies and subsidies to its grape growers and wine producers. A major EU concern is the use of semi-generic names on some U.S. wines. Other issues include tariffs, approval procedures for labels, the use of certain terms on labels, and import certification. The United States will continue in the negotiations to press the EU to give U.S. wine makers equitable access to the EU wine market.

E. Mediterranean/Middle East

Overview

U.S. trade relations with the countries of Northern Africa and the Middle East, while to date relatively modest, have considerable potential value in terms of both U.S. commercial and foreign policy interests. The U.S.-Israel Free Trade Agreement, together with the Trade and Investment Framework Agreements (TIFAs) established with several countries in the region, provide the context for our bilateral trade policy discussions with these countries, which are aimed at increasing U.S. exports to the region and assisting in the development of intra-regional trade.

Highlights of the achievements of this Administration since 1993 include:

- ▶ *Extending the Benefits of Free Trade to the Palestinian Authority by Expanding the U.S.-Israel Free Trade Agreement.* In 1996, the Administration expanded the 1985 U.S.-Israel Free Trade Area Agreement with an Agreement on Trade in Agricultural Products that provides for improved market access for U.S. agricultural commodities. In 1998, the Administration succeeded in increasing the tariff-rate quota for U.S. in-shell almonds; facilitating the importation of U.S.-manufactured automobiles, and simplifying packaging and pricing procedures for U.S. exports to Israel. In 1996, the Administration strengthened trade and the peace process by extending duty-free treatment under the U.S.-Israel FTA to products from the West Bank and Gaza Strip. Under this arrangement, the United States has received assurances from the Palestinian Authority of reciprocal duty-free treatment of U.S. products entering those areas.
- ▶ *Promoting the Middle East Peace Process by Establishing Qualifying Industrial Zones (QIZ).* In 1998, the Administration passed legislation to designate the first of several industrial parks in Jordan, Israel and Egypt as a "Qualifying Industrial Zone" from which goods can enter the United States duty-free. By attracting Jordanian, Israeli and outside investors, these industrial zones are part of the Administration's broader efforts to bring peace to the Middle East, by encouraging greater economic cooperation and interdependence among countries in the region. The first QIZ in Jordan, Irbid, opened in 1998. The Administration continues to designate additional qualifying industrial zones, further increasing employment and investment,

and encouraging stability in a volatile region.

1999 Activities

With respect to the Mediterranean/Middle Eastern region, in 1999 we expanded and strengthened our bilateral and regional trade relationships with key partners Jordan, Morocco, Egypt and Turkey by negotiating bilateral Trade and Investment Framework Agreements (TIFA) with each. Each TIFA establishes a bilateral Trade and Investment Council that enables USTR-chaired representatives to meet directly with our counterparts regularly to discuss specific trade and investment matters and to negotiate the removal of impediments and barriers to trade and investment. In 1999, we further expanded the establishment of Qualifying Industrial Zones. Working closely with the Governments of Israel and Jordan, we succeeded in designating additional qualifying industrial zones in the region in order to help attract investment and strengthen economic integration in the region. In 1999, we designated the Industrial Park in Gateway, Al-Kerak Industrial Estate, Ad-Dulayl Industrial Park, and Al-Tajamouat Industrial City in Jordan as four additional qualifying industrial zones.

1. Qualifying Industrial Zones

On March 6, 1998, USTR designated an industrial park in the city of Irbid, Jordan as the first “Qualifying Industrial Zone” (QIZ) from which goods can enter the United States duty-free. This action was pursuant to legislation passed by the Congress in October 1996, authorizing the President to proclaim elimination of duties on articles produced in the West Bank, Gaza Strip, and qualifying industrial zones in Israel and Jordan and Israel and Egypt. While so far Egypt has decided not to take advantage of this option, Israel and Jordan have moved ahead. By 1999, four zones had been designated as qualifying industrial zones, from which goods produced through Israeli-Jordanian cooperation can enter the United States duty-free. These QIZs support

the Administration’s overall goal of encouraging inter-regional cooperation. President Clinton issued a November 1996 proclamation delegating the authority to designate qualifying industrial zones to the U.S. Trade Representative and providing duty-free treatment to products of the West Bank and Gaza.

2. Trade and Investment Framework Agreements

In 1999, the Administration negotiated three Trade and Investment Framework Agreements with key regional partners, Egypt, Jordan, and Turkey and began negotiations with Tunisia. An earlier TIFA with Morocco was signed in 1995. The Administration inaugurated successful biannual Trade and Investment Council talks with the Government of Egypt and annual talks with the Government of Jordan in 1999 to review bilateral and regional trade and investment issues such as improving market access for U.S. industrial and agricultural products, improving intellectual property rights protection, and promoting duty-free e-commerce. The United States also negotiated a Trade and Investment Framework Agreement with Turkey in September 1999, further expanding our bilateral relationship and strengthening our regional approach. We expect to have our first meeting in March 2000.

3. WTO Accession

The Administration supported Jordan’s successful accession to the WTO in 1999. Negotiations with Saudi Arabia and Oman on their accession to the WTO continue. In both accession negotiations, the Administration continues to insist on entry based on implementation of WTO provisions upon accession and commercially meaningful market access commitments for U.S. goods, services, and agricultural products.

4. Intellectual Property Rights

Intellectual property rights protection remains a leading Administration priority in the

Mediterranean region. Because of continuing concerns with Israeli efforts to reduce and eliminate piracy of intellectual property, on May 1, 1999, Israel remained on the “Special 301 Priority Watch List.” Egypt, Turkey, and Kuwait also are on the Priority Watch List; while Lebanon, Oman, Qatar, Saudi Arabia, and the UAE are on the Watch List. Jordan, Yemen, and Bahrain were removed from the list in recognition of their efforts.

F. Central Europe and the Newly Independent States

Overview

The United States has actively supported political and economic reforms in Central Europe and the Newly Independent States (NIS) of the former Soviet Union. The United States continues to provide financial, technical, and administrative assistance designed to support movement within these countries toward democracy and market economies. A primary focus of U.S. efforts has been to construct a framework for the development of strong trade and investment links between the United States and Central Europe and the NIS. This framework includes negotiating trade agreements to extend Normal Trade Relations (formerly referred to as “most-favored nation” or “MFN”) tariff treatment to these countries and to enhance intellectual property rights (IPR) protection; extending Generalized System of Preferences (GSP) benefits to eligible countries; encouraging accession to the WTO; and negotiating bilateral investment treaties to guarantee compensation for expropriation, transfers in convertible currency, and the use of appropriate dispute settlement procedures.

Highlights of the achievements of this Administration since 1993 include:

- *Promoting Stability and Economic Reform in Central Europe, Russia and the other Newly Independent States.* The

Administration from its start in 1993 to the present has worked bilaterally and multilaterally to promote economic reform and cement democratic institutions in order to ensure a permanent end to the Cold War. Thus, it has sought to develop strong, healthy trade and investment relations with the countries of Central Europe and Eurasia. Bilaterally, the Administration has negotiated trade agreements and investment treaties throughout Central Europe and Eurasia. These agreements have led countries of the region to take key steps in liberalizing their trade regimes and removing barriers to investment. In addition, the Administration has encouraged these countries to join the WTO and to take on obligations to keep their markets open. Since 1993, eight countries in the region have become members of the WTO and another 14 states – including Russia and Ukraine – applied for WTO membership. Albania, Croatia and Georgia are expected to join the WTO in 2000.

- *Significantly Improving the Protection of Intellectual Property Rights in Central Europe.* The Administration has vigorously sought to upgrade the level of protection for intellectual property rights in Central Europe and Eurasia. The United States signed seven bilateral intellectual property right agreements in the region, including, with the Baltic states (1994), Hungary (1993), and Croatia (1998). These agreements require the introduction of domestic legislation and the joining of international conventions that will provide adequate and effective protection for copyrights, including computer software, patents, trademarks, and trade secrets. Further, the Administration persuaded Bulgaria in 1998 to close down pirate CD-production facilities, which the U.S. copyright industry estimated resulted in around

\$200 million a year in lost revenues. Overall, these countries have made great strides in improving the level of protection for intellectual property rights since 1993, when they generally had woefully inadequate legislation.

- *Ensuring Fair Competition in the International Commercial Space Launch Market.* The Administration negotiated bilateral agreements with Russia (1993) and Ukraine (1996) setting out conditions under which Russian and Ukrainian commercial space launch services providers could participate in the international commercial space launch market, so that the international market was not disrupted by unfair competition (the vast majority of commercial satellites launched in this market are U.S.-built and require U.S. government authorization for export to other countries for launch). The agreements contain requirements related to the number of commercial launches these countries can make while the agreements remain in effect as well as the terms (including price) Russian and Ukrainian launch providers can offer their customers.

1999 Activities

In 1999, most Central European and Newly Independent States (NIS) countries overcame significant impediments to make progress in their efforts to develop vibrant market-based economies. Much of the region suffered substantial economic hardship in 1999 primarily stemming from the financial crisis in Russia and the economic slowdown in the region's leading trade partner, the European Union. Furthermore, the war in Kosovo seriously disrupted trade and economic development throughout the Balkans. Since the formal dissolution of the Soviet Union at the end of 1991, each of the new independent republics has also been working towards the goal of developing market-based economies; however,

progress in some of these countries is limited. The nature of the reforms adopted and the speed with which they are being implemented varies considerably from country to country.

Against this backdrop, USTR undertook a number of efforts in 1999 to stabilize and enhance U.S. trade ties with Central European/NIS. We negotiated an increase in the number of launches to geo-synchronous Earth orbit permitted to Russian space launch services providers under the 1993 Commercial Space Launch Agreement. We drafted legislation, entitled the "Southeast Europe Trade Preference Act," which was transmitted to Congress in November. This bill is an integral part of the United States' commitment to promote economic and political stability in this war-torn region. The legislation would provide the authority to establish duty-free treatment for certain imports from the Balkans region for a five-year term. In the agriculture area, the Polish Government, responding to massive farmer protests, proposed to exercise its right to raise applied tariff rates on agricultural goods to the much higher bound rates. Such a step could have closed off one of the United States largest agriculture exports markets in Central Europe and Eurasia, which accounted for over \$120 million of exports a year. Heavy and sustained U.S. pressure combined with opposition from the European Union convinced the Poles to abandon this proposal.

We also in 1999 assisted in making substantial progress in efforts to integrate the countries of Central Europe and Eurasia into the global economic system through WTO membership. In 1999, Latvia and Estonia became WTO members; they have a combined GDP of more than \$10 billion. Also, we contributed to completing negotiations with Albania, Croatia and Georgia, which will be the first Balkan countries and only the second country from the Newly Independent States to join the WTO. These countries, which have a combined GDP of over \$20 billion, are expected to join the WTO in 2000. Finally, we

played an instrumental role in bringing to closure Jordan's WTO accession.

United States efforts to address specific trade issues and problems in the Europe and Mediterranean region are described below:

1. Normal Trade Relations Status

All of the Central European countries, except Serbia-Montenegro, and all of the NIS countries receive NTR tariff treatment. As part of U.S. sanctions policy, the President revoked NTR from Serbia-Montenegro. While certain sanctions against Serbia-Montenegro were lifted in 1996 pursuant to the peace accords negotiated in Dayton, Ohio, NTR tariff treatment was not restored.

The United States has some form of trade agreement with all of the Central European and NIS countries. In addition to these general trade agreements, the United States has concluded a variety of trade agreements concerning specific product areas with various Central European countries and the NIS, such as on firearms with Russia, textiles with Romania and Macedonia, poultry with Poland and Russia, and space launches with Ukraine and Russia (see below).

Under Title IV of the Trade Act of 1974 (the Jackson-Vanik provisions), the President is required to deny NTR tariff treatment to any non-market economy that was not eligible for such treatment and that the President determines denies or seriously restricts or burdens its citizens' right to emigrate, unless the President determines that a waiver of the requirement will substantially promote the legislation's objectives, or has reported to Congress that an affected country complies fully with the legislation's emigration requirements. In addition, the Jackson-Vanik provisions require affected countries to have a trade agreement with the United States, including certain specified elements. Title IV applies to Russia, Ukraine, the other ten NIS republics and Albania within the region. In the region, the

President has determined that Albania, Russia and all of the other NIS except Belarus are in full compliance. Belarus continues to receive NTR tariff treatment under annual waivers. Congress must enact a law to terminate application of Title IV to a country.

In December 1991, Congress confirmed that Title IV no longer applies to Estonia, Latvia, and Lithuania. Pursuant to specific legislation, the President also terminated application of Title IV to the following countries and accorded them unconditional NTR status: the Czech and Slovak Federal Republic (now the Czech Republic and Slovakia -- April 1992), Hungary (April 1992), Bulgaria (September 1996), and Romania (November 1996). Title IV never applied to Poland or the former Socialist Federal Republic of Yugoslavia. As of January 1999, legislation to permanently remove the Kyrgyz Republic and Albania from application of Title IV has passed the Senate and is awaiting passage by the House of Representatives.

2. Intellectual Property Rights

As part of the effort to ensure adequate and effective protection of intellectual property rights, the United States has concluded bilateral agreements covering IPR protection throughout Central Europe and the NIS. The IPR provisions are typically contained in either a bilateral trade agreement or a bilateral investment treaty or, less frequently, in a stand-alone bilateral IPR agreement. Further, all the countries in the region that are members of the WTO are required to afford the protections specified in the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The United States has worked closely with countries in the region to improve the level of IPR protection and has provided significant technical assistance in this regard. During the 1990s, customs and law enforcement authorities throughout Central Europe and the NIS made slow progress in improving their enforcement efforts. Consequently, piracy remains a serious problem.

Moreover, Russia, Ukraine and many of the NIS countries still have not fully implemented the IPR provisions of their bilateral agreements; the United States continues to work with them to bring them into compliance. Also, USTR has consulted with many of the WTO members in the region to help them prepare to meet the TRIPS obligations that entered into force on January 1, 2000 for developing countries and countries whose economy is in transition. IPR issues in four countries merit special mention.

a. Ukraine

Ukraine has made significant progress in enacting IPR legislation and joining key IPR international conventions since gaining its independence in 1991. It ratified the Geneva Phonogram Convention in 1999. However, major deficiencies in the IPR regime continue, especially in the area of enforcement, which remains weak and sporadic. Piracy of U.S. films, videos, sound recordings, and computer software is widespread. Most urgently, several plants that produce unauthorized optical media products (CDs and CD-ROMs) have sprung up in Ukraine. These plants export their pirated products to other countries in Europe, resulting in large estimated lost revenues for the U.S. recording industry. In response, USTR in April 1999 elevated Ukraine to the Special 301 "Priority Watch List" and held high-level consultations in December with Ukrainian authorities about addressing this problem. Re-elected President Leonid Kuchma and other key Ukrainian officials have expressed a willingness to tackle this problem. Other problems include registration and protection of trademarks and the need for Ukraine to provide protection, as required by the bilateral trade agreement, to pre-existing U.S. copyrighted works and sound recordings still under protection in the United States. Another major deficiency is the lack of authority on the part of Ukrainian Customs for border enforcement.

b. Bulgaria

In 1999, Bulgaria successfully turned around its serious problem with the production and export of pirated optical media. In January 1998, USTR elevated Bulgaria to the Special 301 "Priority Watch List" during an out of cycle review because of its failure to adequately combat this piracy. In consultation with U.S. officials and U.S. industry, Bulgarian authorities undertook a series of strong enforcement measures to reduce significantly the production and export of pirated optical media. Because of these measures, USTR was able to move Bulgaria to the Special 301 "Watch List" in November 1998 and to remove it from all Special 301 lists in April 1999.

c. Poland

Poland has a WTO TRIPS obligation to provide by January 1, 2000, fifty-year protection for sound recordings. The Polish Government submitted draft legislation in 1999 to Parliament that would provide such protection. Although Poland failed to meet the deadline for enacting such legislation by the end of 1999, the Polish Government predicts that the legislation will be passed in 2000.

d. The Russian Federation

Russia has enacted comprehensive laws to protect IPR, but certain major deficiencies remain. Most notably, enforcement of IPR remains a pervasive problem. The prosecution and adjudication of intellectual property cases remains weak and sporadic, there is a lack of transparency, and a failure to impose deterrent penalties. Customs administration also needs significant strengthening. Piracy of U.S. films, videos, sound recordings, and computer software remains pervasive. Russia has yet to provide protection, as required by our bilateral trade agreement, to pre-existing U.S. copyrighted works and sound recordings still under protection in the United States. Some U.S. companies have also had difficulty registering well-known marks, and trademark infringement is reportedly on the rise.

In April 1999, Russia was again placed on the Special 301 "Priority Watch List" because of these and other problems. In 1998, the U.S. Government began a U.S. Government-wide IP law enforcement technical cooperation program with Russia which was proposed as part of the U.S.-Russia Joint Commission chaired by Vice President Gore and the Russian Prime Minister. Since 1998, this group has intensified technical assistance on both enforcement and WTO requirements. Training for 12 key Moscow-based prosecutors took place in Washington during the week of July 26, 1999 with positive results. In addition, the U.S.-Russia Bilateral Intellectual Property Working Group met in March 1999 and engaged Russian senior policy and technical level officials on key issues. On enforcement, the GOR has been able to show increases in investigations, but no progress in prosecution of cases.

3. Generalized System of Preferences

Under the GSP program, developing countries are eligible to receive duty-free access to the U.S. market for many items, if it is determined that these countries meet certain statutory criteria. In addition, a country must first have NTR status to apply for GSP treatment. Most Central European countries have been beneficiaries of this program since the early 1990s. Until 1993, however, most of the NIS were not eligible to receive GSP benefits because they were considered successor states of the former USSR, and therefore were prohibited by statute from receiving GSP benefits. The prohibition against granting GSP to the successor states was removed as part of the 1993 Budget Act. By the beginning of 1996, all of the former Soviet republics that had requested beneficiary status received GSP, although Azerbaijan, Tajikistan, and Turkmenistan have never requested GSP and therefore do not benefit from the program. In late 1997, Georgia petitioned for eligibility as a GSP beneficiary country; that petition is under review. Estonia, Latvia, and Lithuania are not considered successor states of the USSR, and therefore became

beneficiaries of the GSP program in February 1992.

In 1997 the AFL/CIO petitioned USTR to remove Belarus from eligibility for the GSP program due to violation of worker rights. A public hearing was held in November 1997 as part of USTR's ongoing review. In December 1999, after affording the Government of Belarus ample time to improve its worker rights situation and after seeing no progress on this front, the U.S. Government decided to begin the process of removing Belarus from the GSP program.

In 1997, the Government of Russia petitioned the U.S. for duty-free treatment under the GSP program for exports of both unwrought titanium and wrought titanium. On July 1, 1998 President Clinton granted the request on wrought titanium. The petition on unwrought titanium was "pending" based on the situation in the U.S. titanium industry. Russia has expressed a continuing interest in a GSP designation for unwrought titanium; however, the domestic industry faces a situation of weakened demand and depressed prices. In late 1999, USTR wrote to the Government of Russia proposing that the petition on unwrought titanium be withdrawn.

The GSP legislation contains a provision that makes a country ineligible for GSP benefits if it affords preferential treatment that has a significant adverse effect on U.S. commerce to the exports of a developed country. The U.S. Government has been consulting with the Central European countries about addressing the problem of preferential tariffs given EU exporters vis-a-vis U.S. exporters pursuant to their Association Agreements with the EU. (See section on EU Association Agreements and EU Membership below.)

4. The Southeast Europe Trade Preference Act

On November 12, 1999, the Administration transmitted a draft bill, the "Southeast Europe

Trade Preference Act” (SETPA), to Congress for its consideration. The SETPA would implement, in part, President Clinton’s commitments to the countries of Southeast Europe pursuant to the Southeast Europe Trade Expansion Initiative announced at the Sarajevo Summit in July 1999. The SETPA would promote economic development and stability in Southeast Europe by increasing access to the U.S. market and facilitating regional investment. The SETPA, which is patterned after the Andean Trade Preference Act, would provide the authority to establish duty-free treatment of certain imports from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Macedonia, Romania, Slovenia, and the territories of Kosovo and Montenegro on the basis of specified criteria. Duty-free treatment under the SETPA would extend for a period of five years in order to provide investors adequate time to take advantage of the unilateral preferences that the program offers.

5. WTO Accession

Almost all of the Central European and NIS countries are members of or are in the process of acceding to the WTO. Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia, and Slovenia joined the WTO prior to 1999. In December 1998, the Kyrgyz Republic became the first NIS country to join the WTO. Latvia and Estonia joined the WTO in 1999, and Georgia will ratify its WTO accession package and become a member in early 2000. WTO accession working parties have been established for Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Kazakhstan, Lithuania, Moldova, the Russian Federation (See section on Country Specific Issues below), Ukraine and Uzbekistan. The United States supports the accession of these countries into the WTO on commercial terms and on the basis of implementation of WTO provisions. WTO accession and the adoption of WTO provisions can be an important method of supporting economic reform. The United States has provided

technical assistance, in the form of short- and long-term advisors, to many of the countries in support of the WTO accession process. (See Chapter II for further information on accessions.)

6. Bilateral Investment Treaties

Bilateral Investment Treaties (BITs) protect U.S. investment abroad in countries where U.S. investors’ rights are not protected through existing agreements such as our Treaties of Friendship, Commerce and Navigation. The United States has placed a priority on negotiating BITs with countries undergoing economic reform where we believe we can have a significant impact on the adoption of liberal policies on the treatment of foreign direct investment. They also lay the policy groundwork for joining the WTO. BITs provide that U.S. companies will be treated as favorably as their competitors (by providing the better of national or NTR treatment). In addition they: (1) establish clear limits on the expropriation of investments and ensure prompt, adequate, and effective compensation when expropriation occurs; (2) guarantee U.S. investors the freedom to transfer funds in and out of a country without delay, using a market rate of exchange; (3) restrict the ability of local governments to require inefficient and trade distorting practices by prohibiting performance requirements such as local content or export quotas; (4) give U.S. investors the right to submit an investment dispute with the Treaty partner’s government to international arbitration; and (5) give U.S. investors the right to engage the top managerial personnel of their choice, regardless of nationality.

The United States has BITs in force with six NIS countries – Armenia, Georgia, Kazakhstan, the Kyrgyz Republic, Moldova, and Ukraine. Azerbaijan, Belarus, Russia, and Uzbekistan have also signed BITs with the United States, but the formal process of ratification has not been completed. Discussions for BITs are also underway with most of the other NIS republics.

In Central Europe, the United States has BITs in force with Albania, Bulgaria, the Czech Republic, Estonia, Latvia, Poland, Romania, and Slovakia. The BITs with Croatia and Lithuania have been signed but await ratification by both sides. In 1999, the United States held negotiations with Slovenia and will be working to conclude those negotiations this year.

7. Commercial Space Launch

The United States maintains agreements on commercial space launch services with both Russia and Ukraine. On September 2, 1993, Vice President Gore and Russian Prime Minister Chernomyrdin signed an agreement on Russia's participation in the commercial space launch market. The agreement gives Russia an opportunity for its space launch industry to participate in the international launch services market and offers Western satellite companies an additional source of competitive launch capacity. It also provides general rules of the road for fair competition in commercial space launches and requires Russia to charge prices comparable to those of Western launch providers for similar services during the period of its space launch industries' transition to market-based operations. As originally concluded, the agreement afforded Russia the opportunity to compete for contracts to launch up to eight commercial payloads to geosynchronous earth orbit (GEO) for international customers (in addition to the INMARSAT 3 satellite and three launches to low-earth-orbit for the Iridium system) between signature and December 31, 2000. On January 30, 1996, Vice President Gore and Prime Minister Chernomyrdin signed an agreement that amended the September 2, 1993, text to allow Russia the opportunity to launch up to 15 commercial payloads (in addition to INMARSAT 3) to GEO, with four more launches possible if future market demand proved more robust than anticipated. The amendments also gave Russia additional flexibility on pricing in exchange for greater transparency in price setting, and liberalize rules

governing the launch of satellites to low-earth orbit.

In late 1998, the Administration informed the Russian Government that it could not foresee increasing the quantitative restriction on GEO launches until Russia showed greater cooperation in preventing the transfer of missile technology to nations such as Iran. By July of 1999, the Administration decided that Russian cooperation in the non-proliferation area was sufficient to permit an amendment to the agreement providing for an increase in the number of GEO launches from 16 to 20 (market demand had not developed to the point where the "conditional" increase of four launches mentioned above could be justified). The amendment permitting the increase of four launches became effective in late 1999.

On February 21, 1996, Vice President Gore and Ukrainian President Kuchma signed an agreement on Ukraine's entry into the commercial space launch market. The agreement with Ukraine is meant to serve the same basic function as the pre-existing agreements with China and Russia, and its provisions are broadly similar to those of the other two agreements. The agreement affords Ukraine the opportunity, between signature and December 31, 2001, to launch up to 16 commercial payloads to GEO for international customers (11 of which must be reserved for a joint venture involving a U.S. company). In addition, Ukraine will have the opportunity to launch up to four more commercial payloads (three of which must be reserved for a joint venture with a U.S. firm) to GEO if future market demand proves more robust than anticipated. The liberalized rules governing pricing and launches to low-earth-orbit contained in the China and amended Russia agreements are mirrored in the agreement with Ukraine. There was no need to revisit the terms of the agreement in 1999.

8. EU Association Agreements and EU Membership

The United States strongly supports the integration of the Central European countries into Western Europe. Ten Central European countries – all except some of the former Yugoslav republics – have concluded Association Agreements (now called Europe Agreements) with the EU. These Association Agreements are meant to set the stage for eventual full EU membership; they establish preferential trade relationships with the EU phased in over several years. When fully implemented, these agreements provide that tariff rates on virtually all industrial products will be reduced to zero and preferential rates and quotas will be established for many agriculture products. These countries' Most Favored Nation (MFN) tariff rates on industrial goods are generally higher, and the rates on agricultural goods are usually lower, than comparable EU rates. Consequently, U.S. exporters often face relatively high MFN tariff rates in contrast with the zero or preferential rates borne by EU exporters. Much of this tariff differential problem with respect to industrial goods will dissipate when the candidate countries join the EU and adopt its generally low industrial tariff rates.

In the interim period prior to these countries' accession to the EU, the United States is consulting with the Central European countries to address this tariff differential problem. In 1999, the United States held talks with Poland, the Czech Republic, Hungary, Slovenia and other candidate countries on this issue. Slovenia has announced a plan to lower its high MFN tariff rates down to the EU's over a three year period. Negotiations with Poland, Hungary and the Czech Republic are ongoing; talks on the tariff differential problem with the other candidate countries are set to be launched in 2000.

As part of the accession process, the candidate countries are harmonizing their laws and regulations to those specified in the EU's common

legislative regime, the "acquis communautaire." Frequently, harmonization represents an improvement over the existing regimes in the candidate countries. In the case of audio-visual policy, candidate countries must harmonize their laws with the EU's Television Without Frontiers Directive, which establishes broadcast quotas for European and domestic production on television. This directive provides a country with flexibility in implementing the quotas. The United States in 1999 continued to work with the candidate countries to encourage them to include the flexibility option in their legislation.

The EU has not declared a target date for new members to join. The EU in 1999 conducted extensive accession negotiations with five of Central European countries (the Czech Republic, Estonia, Hungary, Poland and Slovenia). In December 1999, the EU Council at Helsinki announced plans to launch accession negotiations in 2000 with the other five Central and Eastern European candidate countries (Bulgaria, Latvia, Lithuania, Romania and Slovakia). The EU also will be conducting accession negotiations with Cyprus and Malta; it has announced that Turkey is a candidate for membership, but has not set a date for beginning accession negotiations. The EU probably will not take in any new members before 2003 and for some candidates membership may not come for many years later.

9. Country Specific Issues

The United States encountered or continued to have a number of country specific trade issues in the region, which were not described above. The major items are discussed below:

a. Russia: Aircraft Market Access

In 1996, the United States and Russia concluded a joint Memorandum of Understanding (MOU) that addresses U.S. concerns about access to the Russian civil aircraft market and the application of international trade rules to the Russian aircraft sector. Under the MOU, the Russian Federation

confirmed that it will become a signatory to the WTO Agreement on Trade in Civil Aircraft. In the interim, the MOU commits the Russian Federation to provide fair and reasonable access for foreign aircraft to its market. Russia agreed to take steps, such as the granting of tariff waivers and the reduction of tariffs, to enable its airlines to meet their needs for U.S. and other non-Russian aircraft on a non-discriminatory basis.

In consultations in 1998, the United States raised objections to the Russian Ministry of Economy's Resolution #716 which sets conditions for tariff waivers on imported aircraft. Among other things, the resolution requires Russian airlines to commit to acquire Russian-made aircraft equivalent to three times the amount of the duties waived, in order to receive tariff waivers for the import of foreign-made aircraft.

In 1999, informal consultations were held concerning tariff waivers for four Boeing B767 aircraft to be leased by Aeroflot and the application of Resolution #716. After a year's delay, tariff waivers for this transaction were granted on December 28, 1999. Aeroflot also agreed to acquire seven Russian-made Ilyushin IL-96-300 aircraft in addition to the imported Boeing aircraft. The United States continues to oppose this type of offset requirement.

Through 1999, Russian airlines have been able to import approximately 20 non-Russian aircraft under the MOU, the majority of which were of U.S.-origin. In accordance with the MOU, the Russian Federation also lowered tariffs on aircraft from 30 to 20 percent.

b. Russia: Potential Restrictions on Investment & Services Sectors

The United States was active in opposing proposed Russian legislation in two services sectors, tourism and insurance, which could potentially have deprived U.S. investors and services providers of meaningful market access. Following timely U.S. intervention, market-access

restricting draft Amendments to Russia's Tourism Law, which was passed by the Russian Parliament in late 1998, were subsequently vetoed by Russian President Yeltsin. In addition, the U.S. Government expressed concern that draft amendments to the "Law on Foreign Investment in the Russian Federation," which passed the Duma and Federation Council in July 1998, would have restricted or prohibited foreign investment in a wide range of sectors, including tourism and insurance. These also were vetoed. In July 1999, the U.S. was successful in persuading President Yeltsin to veto a restrictive insurance bill which had passed the upper house of the Duma. An insurance law was passed by the Duma in October 1999 which contains some improvements but which also includes certain restrictions that the U.S. will seek to eliminate. In late 1999, a restrictive draft companion law to the Foreign Investment Law, which was passed in July 1999, entitled "On Bans and Restrictions on Foreign Investment into the Russian Federation," was passed by the Duma in first reading. While we have registered our concerns with an overall positive effect, forces in the Russian Parliament may still pursue similarly restrictive legislation. The United States will continue to monitor carefully legislative developments in these areas.

c. Russia: Product Standards, Testing, Labeling and Certification

U.S. companies still cite product certification requirements as a principal obstacle to U.S. trade and investment in Russia. In the context of Russia's WTO accession negotiations, we continue to urge Russia to bring its standards and certification regime into compliance with international practice. The Russian Government is now attempting to put in place the necessary legal and administrative framework to establish standards procedures and processes for certification and licensing of products in Russia in order to better align with WTO rules.

There has been some movement to eliminate duplication among regulatory agencies and to

clarify categories of products subject to certification. However, businesses are still experiencing difficulties in getting product approvals in key sectors. Manufacturer declaration of conformity is now feasible under Russian law, but is not applied in practice. In 1998, the Russian State Committee on Standards adopted a new nomenclature of goods subject to mandatory certification, effective January 1, 1999, and the Russian Government has been moving to revise problematic legislation, as provided under its Technical Barriers to Trade action plan.

Certification is a particularly costly and prolonged procedure in the case of telecommunications equipment. In many sectors, type certification or self-certification by manufacturers is currently not possible. Veterinary certification is often arbitrary and needs to be more transparent and based on science. Russian phytosanitary import requirements for certain planting seeds (notably corn, soybeans and sunflowers) appear to lack scientific basis and have blocked imports from the United States. Discussions to ease or eliminate burdensome Russian requirements are ongoing.

d. Russia: WTO Accession

Russia has been an observer in the GATT and WTO since 1990 (initially as the Soviet Union), and formally applied for accession to the GATT 1947 in 1993. Its request for WTO accession has been under discussion since 1995. The United States has strongly supported Russia's efforts to join the GATT and WTO, through active participation in the WTO Working Party established to conduct the negotiations and through technical assistance on how to move Russia's trade regime into conformity with WTO rules. In a series of Working Party meetings through December 1998, Russia described its trade regime and WTO delegations noted specific aspects of the trade regime that require legislative action to become compatible with the WTO. Russia also provided initial offers on goods and services market access, in 1998 and 1999 respectively. Bilateral discussions on these offers

will continue in 2000. It is also expected that Russia will announce its strategy for legislative implementation of the WTO during the next Working Party meeting sometime during 2000. WTO-based reforms to Russia's trade regime will strengthen its ongoing efforts for broader-based market-oriented economic reform and can help Russia integrate more smoothly into the global economy. Adopting WTO provisions will give Russia a world-class framework for intellectual property protection, customs duties and procedures, and application of other requirements to imports that will encourage increased investment and economic growth. Completion of the accession negotiations will depend on how rapidly Russia implements WTO rules and moves to conclude negotiations on goods and services with current WTO members.

e. Poland: Phytosanitary Restrictions

Poland's zero tolerance for weed seeds in imports of grain and oilseeds significantly restricts U.S. agriculture exports to Poland. Several of the weeds included on Poland's quarantine list do not meet the international definition of a quarantine pest, and the United States has argued that these weeds should be removed from the list. Beginning in late 1998, the United States has held consultations with Polish officials both informally and under the auspices of the WTO Secretariat pursuant to Article 12 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. The United States continues to press for Poland to remove these weeds from its quarantine list or, at least, to agree to a review of Poland's risk assessment by an independent panel of international experts. Also in 1999, the United States consulted with U.S. agriculture associations about additional steps to take, including the possibility of bringing a WTO dispute settlement case in 2000.

f. Poland: Proposal to Raise Agriculture Tariffs

The Polish Government in the second half of 1999 proposed to raise applied tariff rates on agricultural goods across the board to the generally much higher bound rates. The Polish agriculture sector had a difficult year due in large part to the collapse of the Russian export market and to a flood of EU subsidized farm products. Massive farmer protests throughout Poland forced the dismissal of the Agriculture Minister and led the government to pledge to take action. The United States strenuously opposed raising tariff rates and strongly urged the Poles not to take this step. The EU also voiced its objections to this proposal. The Polish Government in late December reconsidered and decided not to take this step. Instead, it decreed a very limited number of tariff increases, which should have little effect on U.S. exports.

g. Romania: Minimum Reference Prices

In 1998, Romania arbitrarily established minimum and maximum prices for imported meat, eggs, rice, sugar, fruits and vegetables, clothing, and footwear. Romania also instituted burdensome procedures for investigating import prices when the C.I.F. value falls below the minimum import price. This customs valuation regime appears inconsistent with Romania's WTO obligations, especially those under the WTO Agreement on Customs Valuation. In 1999, the United States raised this matter with the Romanian Government. Subsequently, the Agriculture Ministry signaled interest in dropping the use of minimum reference prices in customs valuation. The United States continues to press this issue and is considering the option of bringing a WTO Dispute Settlement case in the matter.

G. Western Hemisphere

Overview

The Western Hemisphere is the largest regional destination for U.S. merchandise exports, accounting for approximately 44 percent of total U.S. goods exports in 1999. Canada is our largest bilateral trading relationship in the world. Our two-way trade in goods with Canada exceeds that with the EU-15. More than a billion dollars a day in trade crosses our border with Canada. Mexico is our second largest single-country trading partner and has been the fastest growing major export market for goods since 1993, with exports up over 100 percent despite the 1994 peso crisis and the resulting economic contraction in Mexico. The NAFTA has fostered this enormous expansion in trade with our two immediate neighbors by opening markets for American goods and services and by establishing fair rules for competing with these two trading partners.

Elsewhere in the hemisphere, dramatic changes have occurred during the past decade. Many Latin American countries have restructured key sectors, enacted reforms, and increased transparency and competitiveness through economic liberalization. Although the Asian financial crisis did have significant adverse effects on most countries in Latin America, on the whole the governments have responded effectively. The strength of the U.S. economy has also helped foster recovery in Latin America. As a result, in most of the region the economic indicators point to stabilization and moderate growth for 2000. Therefore, the region should continue to offer a promising, market-oriented environment in which to do business. The United States will continue to encourage such reforms and to pursue the opportunities presented by dynamic hemispheric growth.

Highlights of the achievements of this Administration since 1993 include:

- *Solidifying the Trilateral Relationship of the US, Canada, and Mexico.* The

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- Administration completed negotiation of, and secured Congressional approval for, the North American Free Trade Agreement (NAFTA), which created the world's largest and most comprehensive free trade area, and is the first agreement to include penalties for the violation of environmental or labor laws. Since the NAFTA implemented, trade among the three signatories has expanded by more than 85 percent. Moreover, U.S. exports to Mexico have increased 100 percent. Mexico is the United States' fastest growing major export market and has become our second largest trading partner. The comprehensive nature of the NAFTA and its side agreements on labor and environmental cooperation are unprecedented and are generating more economic opportunities and a fairer trading environment for Americans in addition to encouraging improved protection for workers and the environment.
- ▶ *Advancing the President's Hemispheric Vision.* President Clinton and the 33 other democratically-elected leaders of the Western Hemisphere launched the negotiations for a Free Trade Area of the Americas (FTAA) which would eliminate tariffs and non-tariff barriers to trade in goods and services throughout the Hemisphere and establish a single set of rules for fair trade in the region. The negotiations are to be concluded by December 2004. Work has begun on draft chapters of the agreement, and the FTAA recently adopted a package of business facilitation measures to remove bureaucratic obstacles in the customs procedures of the 34 countries. The FTAA will be the first hemisphere-wide trade agreement and advances the President's vision for a stronger, more prosperous region.
 - ▶ *Resolving Trade Issues with Our Largest Trading Partner.* During the Clinton Administration, the United States has resolved several disputes with Canada through a combination of bilateral negotiations, GATT and WTO dispute settlement, and use of U.S. trade law, including Section 301. Among the issues on which we have reached agreements with Canada are: beer (1993), softwood lumber (1996), country music television (1996), agriculture (1998), dairy export subsidies (1999), magazines (1999), and sport fishing and tourism in the boundary waters (1999). We continue to work on issues of concern in agriculture, lumber, media industries, and intellectual property rights.
 - ▶ *Promoting Intellectual Property Protection in the Western Hemisphere.* By working with the countries of the region to improve their intellectual property legislation and enforcement, the Administration has achieved substantial progress in protecting the fruits of U.S. inventiveness and creativity. Among the advances that have occurred in the hemisphere are: improved legislation in Brazil on computer software, copyrights, patents and trademarks; a comprehensive Enforcement Action Plan in Paraguay; a Plan of Action for enhanced enforcement in Peru; an intensified anti-piracy campaign in Mexico, as well as legislation to increase penalties and resources for enforcement; new IPR legislation in Ecuador, Honduras and Nicaragua; and improved enforcement in Panama.
 - ▶ *Encouraging Reform and Liberalization in Mercosur.* The Common Market of the South, usually referred to as Mercosur, from its Spanish abbreviation, is the largest preferential trade agreement in Latin America. Consisting of Brazil, Argentina, Uruguay and Paraguay and
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representing over half of Latin America's GDP, the Mercosur market represents nearly 39 percent of U.S. annual exports to Latin America and the Caribbean excluding Mexico. The Administration has continued to strengthen our trade relationship with this important group of countries and to encourage Mercosur to be a force for trade liberalization in the region and the world. The U.S. will continue to pursue vigorously its interests in Mercosur, particularly in areas such as: protection of intellectual property, fair treatment of U.S. products under these countries' trade remedy laws (e.g., footwear and textiles in Argentina, toys in Brazil), and curbing the use of trade-related investment measures in the automobile sector.

- ▶ *Enhancing Our Relationship with Chile.* On the occasion of the April 1998 State Visit to Chile, Presidents Clinton and Frei agreed to establish a bilateral consultative mechanism on trade and investment to enhance our engagement on a broad range of trade issues, including cooperation in the trade institutions that we have in common, i.e., WTO, FTAA, and APEC. Chile has consistently been a recognized leader of economic reform and trade liberalization in Latin America. It has aggressively pursued free trade and tariff-reducing agreements with its trading partners in the Americas and beyond and is implementing a five-year unilateral reduction of its unitary tariff.
- ▶ *Implementation of ATPA and CBI.* The Administration has implemented the Andean Trade Preferences Act (ATPA) and the Caribbean Basin Initiative (CBI) in a manner designed to promote sound trade policies and investment regimes and to prepare countries for the obligations necessary to establish the Free Trade Area of the Americas on a reciprocal basis.

The ATPA provides reduced-duty or duty-free treatment to most imports from Bolivia, Colombia, Ecuador and Peru. It is helping the four beneficiary countries expand economic alternatives in their fight against drug production and trafficking. The Caribbean Basin Economic Recovery Act (CBERA), also known as the Caribbean Basin Initiative (CBI), was enacted by Congress in 1984 to promote the economic revitalization and export diversification of the Caribbean Basin. The program allows the President to grant unilateral duty-free treatment on eligible articles from beneficiary countries. On October 1, 1999, the Administration submitted to Congress the Third Report on the Operation of the Caribbean Basin Economic Recovery Act (CBERA). The report, which is available on USTR's homepage at www.ustr.gov, concludes that the program has had a very positive impact on both U.S. and CBI country exports and has contributed to export diversification in beneficiary countries. The report also finds that the CBI program has helped to improve protection of worker rights and intellectual property in beneficiary countries. In the fall of 1999, both the House and Senate took up legislation to enhance CBERA benefits. The Administration is committed to continuing to work with both Houses of Congress to obtain passage of CBI enhancement in 2000.

1999 Activities

The Western Hemisphere is the largest regional destination for U.S. merchandise exports, accounting for approximately 44 percent of total U.S. goods exports in 1999, the same share as in 1998. During 1999, U.S. exports to Canada and Mexico, with which the United States has a free trade agreement, increased by 6.1 percent and 10.3 percent respectively, while U.S. exports to

the rest of Latin America and the Caribbean declined by 12.9 percent. This decrease was caused by a decline in growth rates in the region due to global market turbulence, as well as recent currency devaluations in several of the larger Latin American economies. However, on the whole, the governments have responded effectively to the challenges produced by the Asian economic crisis. Many Latin American countries have over the last decade restructured key sectors, enacted reforms, and increased transparency and competitiveness through economic liberalization. The strength of the U.S. economy has also helped foster recovery in Latin America. As a result, in most of the region the economic indicators point to stabilization and moderate growth for 2000. Therefore, the Latin American region continues to be an attractive market for U.S. exports and investments. The region should continue to offer a promising, market-oriented environment in which to do business. The United States will continue to encourage such reforms.

This economic restructuring, which characterized the region over the past decade, has enabled the United States to pursue the opportunities presented by dynamic hemispheric growth. At the 1994 Summit of the Americas in Miami, the 34 democratically-elected leaders of the region agreed to create a comprehensive Free Trade Area of the Americas (FTAA) by 2005. At the April 1998 Santiago Summit the hemispheric leaders formally initiated the FTAA negotiations, based on the March 1998 San Jose Declaration of the hemisphere's trade ministers. The United States has played a key role in the FTAA process. In fulfillment of the Miami Summit's objective of concrete progress in constructing the FTAA by the end of the century, at the November 1999 FTAA Ministerial in Toronto the Ministers announced agreement on a set of important business facilitation measures by FTAA countries for implementation during 2000.

Concurrent with the FTAA process, many countries have sought to deepen and expand their

trading arrangements. To give just a few examples, in 1999 Mexico concluded free trade agreements (FTAs) with the EU and with Uruguay, Chile signed an FTA with several Central American countries, and Brazil reached a trade preference agreement with the Andean Community. Mercosur also is slated to begin FTA discussions with the European Union (EU). Chile now has FTAs with every major economy in the hemisphere with the exception of the United States.

Meanwhile, the United States continues to work toward building the FTAA in a manner consistent with U.S. interests and with the objective of encouraging hemispheric growth. President Clinton demonstrated his commitment to the Americas through again traveling to the region, this time to Mexico in February 1999 and Guatemala in March 1999. By pursuing the FTAA, and by vigorously enforcing the bilateral and multilateral agreements that the United States maintains in the region, in particular the North American Free Trade Agreement (NAFTA), the Administration seeks to expand economic opportunities for the United States in the Americas.

1. Canada

Canada is our largest trading relationship and one of the most vibrant, with U.S. exports of goods to our northern neighbor up more than 83 percent since 1992. This is particularly impressive given the very large base from which this growth has occurred. Our two-way trade in goods with Canada exceeds that with the EU-15. More than a billion dollars a day in trade crosses our border with Canada. The U.S.-Canada Free Trade Agreement and the subsequent NAFTA have helped to foster this trade expansion. At the same time, this highly productive trade relationship has had specific areas of difficulty, some of which are longstanding. The Administration is pleased that we have been able to make progress in some of

the most traditionally difficult areas with Canada over the last year and will pursue more progress in 2000.

a. Discriminatory Magazine Practices

In 1997, the United States successfully challenged Canada's protectionist magazine regime in the World Trade Organization. A WTO panel found three components of Canada's magazine policies to be illegal under the *General Agreement on Tariffs and Trade* (GATT), a key trade agreement administered by the WTO. On October 30, 1998, Canada terminated its longstanding ban on split-run imports, eliminated the 1995 special excise tax on split-runs, and modified its discriminatory postal rates and postal subsidies for magazines. However, Canada introduced Bill C-55, which simply accomplished the same result as the import ban and excise tax, and would have kept U.S. and other foreign-produced split run magazines from competing in the Canadian market. Bill C-55 would have prohibited U.S. and other non-Canadian publishing companies, on pain of criminal fines, from using the magazines they produce to advertise directly to Canadian readers.

On May 29, 1999, the United States and Canada reached an agreement resolving the dispute over Canada's discriminatory magazine practices that will significantly increase market access for U.S. companies. As a result of the agreement, the scope of Bill C-55 was narrowed from covering all foreign-owned publications to covering only foreign-owned magazines exported to Canada which carry advertisements directed primarily at the Canadian market over the approved level of advertising space. Initially, 12 percent of the total advertising space in foreign magazines exported to Canada could contain advertisements directed primarily at the Canadian market without penalty under Bill C-55. Under this agreement, the permissible level increases to 15 percent after 18 months and further increases to 18 percent after 36 months.

Section 19 of the Canadian Tax Act will be amended this year to include tax deductions for advertisers in split-run magazines regardless of the nationality of the publisher or place of publication. Section 19 will also be amended to allow advertisers one-half of the standard business deduction if original Canadian content is less than 80 percent of the total non-advertisement content in the magazines. The full deduction remains available to advertisers in magazines with 80 percent or more original Canadian content. The de-linking of the tax deduction from the "content" requirement is beneficial to U.S. firms.

The agreement also liberalizes Canada's foreign investment restrictions in the magazine publishing sector. Prior to this agreement, Canada did not permit majority foreign ownership of a magazine publisher. Now, foreign equity up to 51 percent is permitted, and 100 percent foreign equity will be permitted by the end of May 2000. Investments, however, will continue to be subject to Canada's net benefits review.

Finally, the agreement also includes a consultation clause that permits annual consultations on any matter that may affect the agreement. The United States will pursue bilateral consultations with Canada this year.

b. Discriminatory Measures Against Sport Fishing and Tourism Services

The Province of Ontario had sought to induce U.S. recreational fishermen to use Ontario resort facilities and services (lodging, fishing guides, boats, etc.) by limiting the amount of certain fish they could catch and keep in certain lakes that straddle the Minnesota-Ontario border, unless these same fishermen lodged or otherwise spent money in Ontario. These restrictions, applied to the 150 miles of border, unfairly discriminated against U.S. resorts, fishing guides, and other businesses tied to sport fishing along the Minnesota-Ontario border. On April 29, 1999, USTR initiated a Section 301 investigation pursuant to a petition filed by the Border Waters

Coalition. After several sessions, including consultations under Article 2006 of the NAFTA, Ontario revoked its “stay overnight” requirement and other discriminatory measures. On October 29, 1999, the Province of Ontario further announced that it had revoked other provincial measures that were under investigation in this matter. On November 4, 1999, the Government of Canada agreed that the immigration measure under investigation as a result of this dispute would be reviewed by the NAFTA Temporary Entry Working Group (TEWG) thereby ending the Section 301 investigation. The elimination of the problematic practice in Ontario coupled with the constructive approach to the work permit issue for fishing guides in the TEWG resulted in the resolution of the dispute on November 5, 1999. USTR will continue to monitor the situation pursuant to Section 306 of the Trade Act in addition to pursuing the work permit issue in the TEWG.

The Administration’s handling of this matter is an example of how open markets and environmental concerns can be pursued concurrently. Unfair commercial barriers were eliminated while the United States also encouraged sustainable fisheries in the border lakes. Minnesota state officials, responsible for trade and economic development and natural resources, participated at every stage of the consultations and were part of the negotiating team with Canada. This was also a good example of how cooperative working relationships among federal and state officials can successfully advance U.S. trade and environmental concerns.

c. British Columbia’s Timber Pricing Practices

On August 26, 1999, USTR announced that the United States and Canada agreed to a settlement resolving U.S. complaints over a major timber pricing (i.e., stumpage) reduction that British Columbia put into effect in 1998. The United States considered the stumpage reduction implemented by British Columbia to be in

violation of the 1996 U.S.-Canada Softwood Lumber Agreement (SLA). Shortly after the reduction took effect, the United States brought the dispute before an arbitration panel under the SLA, arguing that the B.C. timber price reduction undermined the effectiveness of the export fee system under the SLA.

This settlement will ensure that the export fee system works as intended and will serve to offset British Columbia’s 1998 government-mandated lumber price reduction over the past year. The settlement calls for Canada to impose a new, higher fee on B.C. lumber exports when they exceed recent average annual shipments to the United States from the province.

d. Intellectual Property Rights

On May 6, 1999, USTR initiated a WTO dispute settlement case against Canada for its failure to amend its patent law to comply with the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights. The TRIPS Agreement requires that Canada provide a patent term of at least twenty years from the date that a patent application is filed for all patents existing on January 1, 1996. The Canadian Patent Act, however, provides that the term of patents based on applications filed before October 1, 1989, is seventeen years from the date that the patent is issued. With respect to a large number of existing patents, Canada is in violation of the TRIPS Agreement as a result of its failure to provide an adequate patent term. This case is presently before a WTO Dispute Settlement Panel, and a decision is expected in the coming months.

e. Agriculture

On December 4, 1998, the United States and Canada entered into a Record of Understanding (ROU) providing for a number of initiatives to move agricultural trade issues toward resolution. As a result of the ROU, the U.S./Canada Consultative Committee (CCA) was formed in April 1999, holding its first meeting in September

1999, to provide a forum to strengthen bilateral agricultural trade relations and to facilitate discussion and cooperation on matters related to agriculture. A Province/State Advisory Group to the CCA was also established in June 1999 which serves as a forum for producers and exporters, through their provincial and state governments, to raise bilateral agricultural trade issues before the CCA, thus ensuring stakeholder input into the bilateral discussions.

As a result of this initiative, Canada has implemented a number of market opening measures. On October 5, 1999, Canada implemented regulations reducing the restrictions under which U.S. hogs could enter Canada. Similarly, U.S. feeder cattle are now allowed entry from six states, and Canada is publishing enhanced market information on cattle trade. U.S. and Canadian cooperation has also facilitated the harmonization of efforts to improve animal drug and pest control registrations, including the examination of pesticide price differentials. Finally, issues affecting potato trade were examined, including the elimination of duplicate testing requirements.

Furthermore, the Administration set up new procedures to monitor imports of Canadian wheat. In 1999, procedures were established to collect information on the quality and value of Canadian wheat imports, which is important to monitoring the implications of Canadian Wheat Board practices. On April 1, 1999, Canada amended its regulations recognizing 14 states as free of karnal bunt, and implemented regulations facilitating the rail transport of U.S. wheat through Canada.

In April 1999, the United States successfully challenged Canada's subsidized dairy industry. A WTO panel found that the Canadian Government, through its government-managed provincial marketing boards, was subsidizing the price of exported milk by way of a two-tiered pricing system. In light of this finding, the Panel also concluded that Canada had violated its export subsidy reduction commitments by exporting a

higher volume of subsidized dairy products than permitted by Canada's obligations under the WTO Agreement on Agriculture. In addition, the Panel found that Canada had improperly imposed a limit on the value of milk that could be imported in any single entry under the relevant tariff-quota.

The Panel's findings were sustained by the WTO Appellate Body in October 1999 in an appeal initiated by Canada. As the result of an agreement concluded on December 22, Canada will comply immediately with its WTO export subsidy commitments on butter, skimmed milk powder, and an array of other dairy products. Canada also has committed to reduce subsidized cheese exports and is scheduled to comply with its reduction commitments on cheese by August 1, 2000. The necessary regulatory reform of the tariff-rate quota will be accomplished no later than February 1, 2000.

2. Mexico

Mexico is our second largest single-country trading partner and has been the fastest growing major export market for goods since 1993, with exports up over 100 percent despite the 1994 peso crisis and the resulting economic contraction in Mexico. The potential of this trade is just beginning to be tapped. The NAFTA has fostered this enormous relationship with its unprecedented comprehensive market opening rules. Furthermore, it is building a fairer trade relationship as Mexican trade barriers are being reduced or eliminated. While barriers to U.S. exports of goods and services to Mexico are now less, the United States has continued to seek improved access to the Mexican market in several areas.

a. Intellectual Property Rights

Piracy and counterfeiting of U.S. intellectual property in Mexico continue to be serious concerns despite several positive developments in Mexico. In November 1998, Mexico announced a new anti-piracy campaign, providing greater

penalties and greater resources for enforcement and training. In March 1999, the Mexican Congress approved legislation increasing penalties and resources for enforcement. Mexico also agreed to a high level U.S.-Mexico bilateral intellectual property rights (IPR) working group to promote IPR protection in a manner consistent with the NAFTA. Efforts are underway to convene the first session of the group this spring.

b. Standards and Technical Regulations

The United States has repeatedly called on Mexico to recognize its obligation to publish changes in regulations with adequate time for public comment. This has been of particular concern with regulations under the jurisdiction of its Ministry of Health. Technical barriers to trade have been the focus of work in the NAFTA trilateral Standards Committee, and that effort will continue. The Committee's work will be supplemented by higher-level discussions when appropriate.

c. Agriculture

North American agricultural trade has grown significantly since the NAFTA. Mexico is currently our third largest agricultural export market. For the last fiscal year, (October 1998-September 1999), Mexico's share of total U.S. agricultural exports increased. Overall levels were the second-highest ever, at nearly \$5.7 billion, with value-added consumer agricultural products at an all-time high.

Current trade irritants include Mexico's limits on the importation and domestic consumption of high fructose corn syrup (HFCS). At the request of the U.S. Government, a dispute settlement panel was established by the World Trade Organization on November 25, 1998. The panel's report, circulated to WTO Members on January 28, 2000, concludes that Mexico's antidumping measure on HFCS violated several provisions of the WTO Antidumping Agreement. The panel recommended that Mexico bring its final

antidumping measure into conformity with its WTO obligations. Mexico is appealing the decision. U.S. exporters of HFCS also are challenging Mexico's measure under the Chapter 19 provisions of the NAFTA.

The United States and Mexico also are seeking to resolve a dispute over the NAFTA's sugar provisions. Mexico imposed preliminary antidumping duties in 1999 on several U.S. exporters of beef and beef offals, and final duties on imports of live swine. Mexico has not administered its tariff rate quota on U.S. dry bean exports in a timely manner in 1999. The Administration will continue to work with affected industries to address these problems, particularly given the importance of continued growth in export opportunities for U.S. agricultural producers.

d. Telecommunications

Mexico's telecommunications services market barriers are a serious source of concern. A policy review by Mexico, which promised to reform international and domestic service regulations to prevent abuses by the dominant carrier, Telmex, is not yet completed. In addition, U.S. carriers indicate that from August 1999 Telmex failed to provide private lines and circuits that are essential for many purposes, including the provision of end-to-end private line service between the United States and Mexico. The United States will continue to encourage a more open telecommunications services market in Mexico, including reviewing this matter under Section 1377 and in light of Mexico's WTO obligations.

e. Customs Valuation

The Mexican Ministry of Finance has established minimum import prices for a specified list of products. Under Mexico's regime, if the declared value of an imported product is below the established minimum price, the importer must post a "guarantee" bond – the value of which is the difference in applicable duties – to obtain the

release of the goods. In the meantime, Mexican customs officials will conduct an investigation to verify the declared value, and will require additional documentation, such as a certification by a chamber of commerce, from the importer. This system poses a serious impediment to trade. The Administration has been consulting with Mexico and will continue to pursue the issue in 2000.

3. Brazil and Southern Cone

a. Mercosur

The Common Market of the South, usually referred to as “Mercosur,” from its Spanish abbreviation, is the largest preferential trade agreement in Latin America. It consists of Brazil, Argentina, Uruguay and Paraguay and represents over half of Latin America’s GDP. Chile and Bolivia are Associate Members of the group. They each have the equivalent of a Free Trade Agreement (FTA) with Mercosur, participate in many of the group’s meetings, but do not partake in the Mercosur common external tariff (CET). Under the Chilean agreement, for example, 67 percent of Chilean exports and 62 percent of imports from Mercosur will be duty-free by 2005. Mercosur was originally established in 1991, with the goal of creating a common market. Implementation of the Mercosur customs union commenced January 1, 1995, with the establishment of a CET, covering most intra-Mercosur trade. Convergence on excepted items is slated for completion by January 1, 2006. Mercosur had a difficult year in 1999, largely reflecting bilateral trade tensions generated by Brazil’s devaluation of the *Real* and exacerbated by the group’s lack of an internal safeguard mechanism. Mercosur’s weak dispute resolution procedures and the growing tendency of individual Mercosur members to negotiate preferential trade agreements with third countries also diluted the group’s cohesion. However, Mercosur closed the year with a Presidential-level

meeting in Uruguay that re-affirmed the leaders’ commitment to progress and unity in Mercosur.

The Mercosur market represents nearly 35 percent of U.S. annual exports to Latin America and the Caribbean excluding Mexico. U.S. goods exports to Mercosur were \$19.2 billion in 1999, with a U.S. trade surplus of just over \$5 billion. This is a considerably smaller surplus than in 1998, due primarily to two factors. First, there was a general decline in trade volume with Mercosur due to continued slower-than-average growth in member countries. In Brazil, real GDP growth was less than 1 percent in 1999, and Argentina experienced a real GDP contraction of 4 percent. The second factor was the impact of the January 13, 1999, float of the Brazilian *Real*, which led to a devaluation of approximately 35 percent over the course of the year. Despite challenges faced by Mercosur during 1999, most analysts expect growth to rebound in 2000.

The United States continues to develop our trade relationship with this important group of countries and to encourage Mercosur to be a force for trade liberalization in the region and the world. In preparation for the trade Ministerials held in the fall of 1999 – the World Trade Organization (WTO) Ministerial and the Free Trade Area of the Americas (FTAA) Toronto Ministerial – the U.S. Government worked closely with our Mercosur trading partners and Chile to build consensus on our positions, through both informal discussions and meetings of our bilateral consultative mechanisms with Chile and Uruguay. While we did not reach full agreement on WTO positions, we found significant areas of cooperation, particularly on agricultural issues. In this area, the United States has much in common with the Cairns Group, which includes Mercosur countries among its members. At the Toronto Ministerial, where the 34 FTAA countries agreed to begin to draft text of the FTAA Agreement and to implement business facilitation measures in the next stage of the negotiations, Argentina assumed the Chairmanship of the process. Other Mercosur countries are playing a leadership role in the

FTAA negotiations as well. Brazil holds the Chair of the Negotiating Group on Agriculture, Uruguay chairs the FTAA's Expert Committee on Electronic Commerce, and Paraguay is the Vice Chair of the Intellectual Property Negotiating Group. For its part, Chile chairs the Market Access Negotiating Group, which includes safeguards, tariffs and standards issues. The United States will continue to pursue vigorously its interests in Mercosur, particularly as these countries work on trade negotiations with others, such as Canada, Mexico, the Andean Community (AC) and the European Union (EU), and as it deepens its institutional reach.

Autos

Throughout 1999, Mercosur was engaged in negotiations to unify its members' investment regimes in the automotive sector, and the U.S. Government has closely followed these talks. Brazil and Argentina, the Mercosur countries with the largest interest in autos, have been the primary participants in these talks, which failed to reach resolution by the January 1, 2000, deadline. On that date, Argentina's obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMS) came into effect due to the termination of its transition period, and Brazil was due to meet the requirements of a March 1998 bilateral agreement with the United States to terminate its TRIMS-inconsistent auto regime, which had been enacted in December 1995. The Brazilian Government committed to eliminate the trade and investment distorting measures in its auto regime and not to extend the measures to its Mercosur partners in the course of the Mercosur auto regime negotiations. In late December, Brazil and Argentina signed a bilateral agreement allowing 60 additional days to reach agreement on a common automotive regime for Mercosur. At the same time, Argentina requested a seven-year extension of its transition period under TRIMS. The U.S. Government is now reviewing its options to respond to Mercosur's failure to establish a TRIMS-consistent automotive regime by the end of 1999.

b. Argentina

U.S. exports to Argentina were down in 1999, but Argentina remained in the top 26 export markets of the United States. Overall bilateral trade declined, and the U.S. surplus narrowed by over \$1 billion to \$2.3 billion in 1999. A key factor in the Argentine economy is not only its trade profile with the United States but with Brazil, Argentina's number one trading partner. After ten years in office in which President Carlos Menem tamed hyperinflation and began to open the Argentine economy to the outside world, President Fernando de la Rúa took office on December 10, 1999. In initial contacts with U.S. Government officials, the new Administration has given no indication that it will take a radically different path on trade issues. President de la Rúa and his cabinet have best expressed their dedication to continued trade liberalization by effecting a smooth transfer to Argentine leadership of the FTAA negotiations.

In addition to working with the Government of Argentina to ensure the success of the next stage of the FTAA negotiations, the United States will pursue with the new Administration resolution of existing trade disputes, such as the lack of intellectual property protection for pharmaceuticals and Argentina's failure to comply with its Uruguay Round obligations on footwear. Trade in agricultural commodities is another important element of our bilateral economic relationship. In 1997, Argentina beef gained entry to the United States, after demonstrating that beef from certain regions in Argentina was free of foot-and-mouth disease (FMD). In October 1998, the Government of Argentina agreed to initiate the importation of fresh and processed pork meat from the United States, and we are continuing to work out the implementation of that pledge. Argentina is seeking approval to export its citrus to the United States, and the United States is working to gain access for Florida citrus to Argentina. Our Governments have worked on these matters using a science-based approach, as is the WTO rule, to

assure the health and safety of our animal, plant and human populations.

Intellectual Property Rights

Argentina's intellectual property regime does not meet TRIPS standards and fails to fulfill long-standing bilateral commitments. Serious concerns regarding Argentina's IPR regime, particularly as regards pharmaceutical patent protection, led the Administration in 1997 to withdraw half of Argentina's benefits under the Generalized System of Preferences.

Rather than witnessing improvements in Argentina's intellectual property regime as the January 1, 2000, date for implementation drew near, we saw a deterioration of intellectual property protection. Administrative difficulties at the Argentine patent office exacerbated the situation. This deterioration occurred despite U.S. Government efforts to resolve our concerns, including through bilateral IPR consultations. In April 1999 the USTR announced that we would initiate WTO consultations with the Government of Argentina on two intellectual property issues that were immediately actionable at the WTO: (1) modifications in the protection accorded confidential test data submitted to Argentine regulatory authorities that appear to violate WTO standstill obligations, and (2) the failure to provide Exclusive Marketing Rights (EMR) to qualifying pharmaceutical products. As of January 1, 2000, when most of Argentina's TRIPS obligations came into effect, Argentina appears to have failed to bring its patent regime in line with its international obligations. The U.S. Government also has maintained a dialogue with Argentina on its review of its copyright legislation.

Textiles and Apparel

In November 1997 a WTO dispute settlement panel ruled in favor of a U.S. challenge to duties and taxes assessed by Argentina that hindered market access for U.S. products. This decision

was later upheld by the WTO Appellate Body. The panel found that Argentina's specific duties on textiles and apparel were excessive and violated Article II of the GATT. The panel also ruled that Argentina's three percent statistical tax on almost all imports was an impermissible charge in violation of GATT Article VIII. In conjunction with the affected industries, USTR has worked in 1999 to ensure that Argentina fully implements the WTO panel finding, and we will continue to do so in 2000.

Footwear

The U.S. textiles and apparel challenge had originally included a complaint on illegal footwear duties as well. However, the WTO panel determination did not specifically address footwear, given that the Government of Argentina had recast the specific duties on footwear as a safeguard measure immediately prior to the formulation of the panel in February 1997. This panel subsequently determined that it could not provide relief with respect to measures that were no longer in effect.

The U.S. Government believed that this safeguard raised serious questions about Argentina's compliance with its WTO obligations, leading us to assert third party rights in an EU panel on the matter. Despite the questions raised regarding the WTO-consistency of the safeguard, Argentina in November 1998 established a stringent tariff rate quota (TRQ) on footwear imports in addition to the safeguard duties already in effect; moreover, Argentina delayed the time period for liberalizing the safeguard measure. The United States initiated its own WTO consultations and subsequently formed a panel on this non-liberalizing modification of the safeguard measure – particularly problematic in light of the requirements of Article 7.4 of the WTO Agreement on Safeguards. This article clearly states that safeguard measures shall be progressively liberalized at regular intervals during the period of application.

The EU-led panel proceeding on the original safeguard measure, in which the U.S. Government vigorously defended its rights, determined that Argentina's footwear safeguard was WTO inconsistent, and the Appellate Body confirmed this finding on December 14, 1999. In the January 2000 meeting of the WTO Dispute Settlement Body in Geneva and in U.S. Government presentations in Buenos Aires, we have stressed Argentina's responsibility to ensure the expeditious elimination of this measure, which is due to expire on February 24, 2000.

c. Brazil

The United States exported goods valued at more than \$13 billion to Brazil in 1999, \$1.9 billion less than in 1998. This decline was reflective of an overall reduction in Brazil's imports last year, during which Brazil was still our 11th export destination. Brazil's market accounts for 24 percent of U.S. annual exports to Latin America and the Caribbean excluding Mexico, and 69 percent of U.S. goods exports to Mercosur. Despite some experts' predictions last January, the Brazilian economy weathered its first year under a devalued *Real* with little difficulty; 1999 closed with an exchange rate of R\$1.8 to the U.S. dollar and an inflation rate of six percent. Predictions of GDP growth for Brazil in 2000 range from two to four percent.

Intellectual Property Rights

In 1997, Brazil enacted laws to provide protection of computer software, copyrights, patents and trademarks, thus making substantial movement toward developing a solid legal regime for the provision of TRIPS-consistent IPR protection. However, deficiencies remain. Notably, the patent law contains a local working requirement that appears to be inconsistent with TRIPS requirements. In addition, the lack of effective copyright and trademark enforcement is a serious concern, particularly regarding protections for sound recordings and movies. Also of concern is the backlog of pending patent applications. The

United States is considering what actions are appropriate in light of our concerns about the Brazilian IPR regime. Brazil is currently on the "Special 301" Watch List. Improving intellectual property protection in Brazil remains a top priority for the United States.

Reference Prices

We have reports from affected U.S. industries, particularly textile manufacturers, that the Government of Brazil requires some products to meet minimum prices for the issuance of import licenses and/or in order to receive normal customs processing. Imports falling below set price levels are either unable to obtain licenses or sent to what is known as the "grey line" for enhanced customs scrutiny. We are concerned that these minimum price levels may be set arbitrarily in contravention of WTO Agreements, and have discussed this matter with Brazilian Government officials in Brasilia, Washington and Geneva. Further, the U.S. actively participated as an interested third party in the EU's WTO consultations on Brazil's use of reference prices in November 1999, and we are reviewing whether to pursue our own WTO consultations on this issue.

d. Paraguay

With a population of just over five million, Paraguay is one of the smaller U.S. markets in Latin America. To illustrate, in 1999 the United States exported a mere \$515 million to Paraguay. However, Paraguay is a major exporter of and transshipment point for pirate and counterfeit products in the region, particularly to Brazil.

Intellectual Property Rights

On January 16, 1998, the USTR identified Paraguay as a "Priority Foreign Country" under the "Special 301" provisions of the Trade Act. On February 17, 1998, the United States initiated a Section 301 investigation of Paraguay's acts, policies and practices regarding intellectual property. On November 17, 1998, Paraguay and

the United States signed a comprehensive Memorandum of Understanding (MOU) and Enforcement Action Plan, which, in conjunction with the passage of trademark and copyright laws and Paraguayan efforts to improve enforcement, enabled USTR to conclude the Section 301 investigation without applying sanctions. We currently monitor Paraguay's compliance with the MOU under Section 306 of the Trade Act and consult with the Government of Paraguay at regular intervals under the MOU terms of reference. In 1999, U.S. Government officials worked continually on intellectual property issues with the GOP, consulting formally twice – in March and September. Our next set of formal bilateral consultations should take place in early 2000.

In the MOU, the Government of Paraguay committed to take a number of near-term and longer-term actions to address the practices that were the subject of the investigation, including implementing institutional reforms to strengthen enforcement and taking immediate action against known centers of IPR violations. Failure to comply with the terms of the MOU could lead to trade sanctions. While piracy and counterfeiting continue to be widespread problems in Paraguay, we have seen efforts by the current Paraguayan Administration to take steps to address this problem. For example, in 1999 the Government of Paraguay conducted several impressive enforcement raids and passed legislation to ensure that copyright infringement is designated as a “public crime” and is enforceable as such in Paraguayan courts. Much remains to be done, however, and the U.S. Government continues to coordinate closely with affected U.S. industries and to work with the Government of Paraguay (GOP) to achieve improvements in the intellectual property regime of Paraguay.

e. Uruguay

The smallest economy of Mercosur with a population of just over three million, Uruguay nonetheless imported \$492 million of goods from

the United States in 1999. In September 1999, our Governments held the first meeting of the U.S.-Uruguay Bilateral Commercial and Trade Review, the initiation of which was a fruit of the 1998 visit of President Julio Maria Sanguinetti to Washington. This mechanism provides our Governments the opportunity to deepen our bilateral dialogue on trade matters and to better coordinate for meetings in multilateral fora, such as the FTAA and WTO. The U.S. Government was able to use our September meeting with the Uruguayan Government to prepare for the ALCA and WTO Ministerial meetings and to highlight the importance of achieving TRIPS-consistency in Uruguay by January 1, 2000. We continue to press the importance of providing adequate and effective intellectual property rights protection with the Government of Uruguay.

f. Chile

On the occasion of the April 1998 State Visit to Chile, Presidents Clinton and Frei agreed to establish a rejuvenated bilateral consultative mechanism on trade and investment to replace the Trade and Investment Council (TIC) from October 1990 that had lapsed into disuse. We wanted to enhance our engagement on the broad range of trade issues, and the Joint Commission on Trade and Investment (JCTI) was subsequently established by USTR and the Chilean Foreign Ministry. The first meeting of the JCTI was held in Washington in October 1998. We followed up on this meeting through a number of Study Group meetings, including on business facilitation and issues related to management of the social dimension of trade. The Joint Commission has been a welcome mechanism for both enhancing our bilateral relationship and encouraging increased cooperation and coordination in the multilateral fora in which our countries participate, such as the FTAA, WTO and APEC. The Commission met most recently in October 1999 in Santiago.

Chile is our 32nd export market, absorbing nearly \$3.1 billion in U.S. exports in 1999. This is no

small feat given that Chile has only 15 million inhabitants. Chile has consistently been a recognized leader of economic reform and trade liberalization in Latin America, with growth averaging eight percent for the decade prior to the economic slow-down experienced in 1998-99. Chile's real GDP grew by approximately 3.3 percent in 1998 and contracted by 1.1 percent in 1999. As a resource-based, export-dependent economy, Chile has been seriously affected by the global drop in commodity prices. In addition, continued sluggishness in the economies of Mercosur and Asia, two major destinations for Chilean exports, contributed to slower Chilean growth in 1999.

Chile has a history of aggressively pursuing free trade and tariff-reducing agreements with its trading partners in the Americas and beyond. This leaves the United States at a growing disadvantage in the Chilean market. Those countries with which Chile maintains special trade arrangements, which include most of our hemispheric trading partners, are exempt from Chilean tariffs or enjoy reduced rates. In addition, the Government of Chile engages in unilateral liberalization, reducing its flat tariff by one percentage point a year until the applied tariff rate for virtually all goods in Chile reaches six percent on January 1, 2003. As of January 1, 2000, the applied tariff rate on most goods in Chile is nine percent, low by regional standards.

Distilled Spirits

Chile historically has maintained a taxation system that discriminates against imported distilled spirits. In December 1997, Chile changed its law to phase in a system that is less obviously discriminatory, but that continues to burden U.S. exports. In January 1998, the United States and the EU participated in GATT Article XXII consultations with Chile on this issue, and a WTO panel was subsequently established at the EU's request. The United States asserted third party interest in the subsequent procedure, and actively represented U.S. concerns throughout.

The panel, in June 1999, and the WTO Appellate Body, in December 1999, found Chile's tax regime inconsistent with Article III:2 of the GATT. These findings were adopted at the January 2000 Dispute Settlement Body meeting, at which Chile stated its intention to comply. The United States will continue to press the Chilean Government to provide expeditiously non-discriminatory tax treatment to all distilled spirits, as required by the GATT.

4. The Andean Community

The U.S. trade deficit with the Andean region increased from \$2.5 billion in 1998 to \$9.7 billion in 1999, in large part due to the increase in the price of oil imported from the region and the slowdown in the Andean economies. U.S. goods exports to the region were down 23.5 percent in 1999, totaling \$11.8 billion.

The Andean Community originated as the Andean Pact in 1969, with Bolivia, Colombia, Ecuador, Peru and Venezuela as its members. However, it was only in the 1990s that the Andean Pact's commitment to form a customs union took on momentum, with reduction and elimination of most duties among the members and an increasingly common external tariff. In 1997 the Andean Community became operational. Among its features are strengthened institutions, such as a Council of Presidents and a Council of Foreign Ministers in addition to meetings of Trade Ministers, and creation of a General Secretariat of the Andean Community mandated to act as the group's executive body.

The Andean Trade Preference Act (ATPA) of 1991 authorizes the President to provide reduced-duty or duty-free treatment to most imports from Bolivia, Colombia, Ecuador and Peru. It is intended to help the four beneficiary countries expand economic alternatives in their fight against drug production and trafficking. ATPA preferential trade benefits are similar to those granted to beneficiaries of the Caribbean Basin Economic Recovery Act. ATPA preferences are

scheduled to end on December 4, 2001. In December 1997 USTR submitted a triennial report to Congress on the operation of the program which indicated that the ATPA has facilitated economic development and export diversification in the ATPA beneficiary countries. The next report to Congress on the ATPA is due December 4, 2000.

a. Trade and Investment Council Meetings

In May 1999 the U.S. and Andean Governments held the inaugural meeting of the U.S.-Andean Community Trade and Investment Council (TIC) in Cartagena, Colombia. The creation of this new partnership with the Andean Community members reflects the increasing importance the Andean Community has attained as a regional decision-making body and reflects the U.S. Government's interest in expanding our trade relationships in the region. This first meeting of the TIC addressed key issues, such as the FTAA negotiations, the WTO, protection of intellectual property rights, and trade issues under the Andean Trade Preference Act. On the margins of the TIC meeting, USTR officials met with the presidents of the Andean countries to discuss trade issues in our relationship. Additional consultations with our Andean trading partners were held in Lima in October 1999, to help prepare for both the FTAA Ministerial and the WTO Ministerial.

b. Bilateral Investment Treaties

In April 1998 the U.S. Government signed a Bilateral Investment Treaty (BIT) with the Bolivian Government. The BIT will soon be submitted for ratification by the U.S. Senate. It will help make Bolivia more attractive to potential U.S. investors and will provide investors in both countries guarantees of access and fair treatment in the other's market. During 1999 the U.S. Government initiated formal BIT negotiations with the Government of Peru and began exploratory discussions with the Government of Colombia. A U.S.-Ecuador BIT went into effect

in May 1997. BIT talks with the Government of Venezuela are on hold pending a review by the incoming Chavez Administration.

c. Intellectual Property Rights

In the area of intellectual property the Andean Community countries have developed common disciplines with legal effect throughout the Community. The various Andean Pact decisions, while generally an improvement from previous disciplines, fell short in a number of ways in meeting WTO TRIPS requirements. The Andean countries have just reached agreement on modifications to the decisions. The U.S. Government is in the process of translating and analyzing the revised legislation to determine TRIPS compatibility.

While Peru is on the Special 301 Priority Watch List, it has developed a plan of action for improved intellectual property enforcement. In November 1999 the Colombian Government resolved a particularly onerous situation facing U.S. television programmers by issuing licenses to legitimate subscription television stations. We are continuing to monitor IPR enforcement efforts in the region, which in general have improved marginally but remain inadequate.

d. Auto Regime

In late 1999 the Governments of Colombia, Ecuador and Venezuela adopted modifications to their automotive trade-related investment measures which they assert bring the program into conformity with their WTO obligations. The U.S. Government is currently analyzing the decision and seeking clarification on a number of points.

5. Central America

The United States remains Central America's principal trading partner. The Central American Common Market (CACM) consists of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua. Panama, which has observer status, and Belize

participate in CACM summits but not in regional trade integration efforts. As a group, the countries of the CACM exported a total of \$11 billion of goods to the United States in 1999, importing \$8.5 billion of U.S. goods. Trade within the CACM was \$2 billion in 1998. The CACM is an internal market of almost 32 million people with a combined GDP of over \$56 billion. GDP per capita varies widely within the region, with the relatively developed service-oriented economy of Panama registering \$3,315 per capita. At the other extreme, Nicaraguan GDP per capita was only \$437 in 1998. Furthermore, these figures do not capture the broad disparities of income evident within most Central American countries.

The CACM signed a trade agreement with Chile in the fall of 1999. Beyond the CACM, countries in the region have also been active in pursuing regional trade liberalization bilaterally or in regional sub-groups. Costa Rica has signed free trade agreements with the Dominican Republic and Mexico. Nicaragua also has a free trade agreement with Mexico. El Salvador has a free trade agreement with the Dominican Republic. Guatemala, Honduras and El Salvador, the so-called "Northern Triangle", are negotiating free trade agreements with Mexico and the Dominican Republic.

All of the countries of the region are participating in the Free Trade Area of the Americas (FTAA) negotiations. Central American countries take an active role in the negotiating process. In the current negotiating phase, Costa Rica chairs the Negotiating Group on Dispute Settlement and Guatemala chairs the Consultative Group on Smaller Economies.

In March 1999, President Clinton joined leaders from Belize, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras and Nicaragua at the Antigua, Guatemala Summit. The President assured his counterparts from Central America and the Dominican Republic of his commitment to seek enhancement of the Caribbean Basin Initiative for the region. Also, the leaders

reaffirmed their desire to address issues of mutual concern with the United States both bilaterally and at the regional level through the Trade and Investment Council mechanism. These meetings provide fora for discussion of common trade and investment interests. The United States held a Trade and Investment Council meeting with Nicaragua in February, 1999. In November, 1999, the United States held trade and economic discussions with Panama in the context of broader bilateral consultations in advance of the transfer of the Panama Canal on December 31, 1999.

a. Agriculture

Falling international prices for agricultural commodities has led to a protectionist backlash in several Central American countries. Agricultural tariffs were raised in Costa Rica, Nicaragua and Panama, although they are still within WTO-bound rates. Costa Rica instituted a special safeguard on imported rice. Costa Rica also began enforcing a WTO-inconsistent law already on its books, requiring that all rice imports be channeled through a Rice Office (which is dominated by domestic Costa Rican rice producers) that has the discretionary authority to limit the sale of imported rice. Panama has also undertaken a wide range of WTO-illegal actions (in the U.S. view) to keep out imported agricultural products, including the arbitrary denial of SPS (sanitary phytosanitary) permits to restrict import levels and requiring importers to purchase certain quantities of local products in order to obtain SPS permits. The United States is working to address these problems with the relevant countries.

b. Intellectual Property Rights

In general, protection of intellectual property rights has improved in the region. Honduras and Nicaragua passed new legislation to improve the protection of intellectual property rights in 1999 in an effort to comply with the TRIPS provisions of the WTO. Enforcement efforts have also been

stepped up in a number of countries, such as Panama and Honduras.

However, inadequate IPR protection continues to be a problem. Guatemala remains on the Special 301 Priority Watch List for its failure to afford acceptable IPR protection. Costa Rica is on the Special 301 Watch List. A number of countries in the region have yet to meet the January 1, 2000 deadline for TRIPS compliance. Remaining issues include both providing an adequate legislative framework and enforcing intellectual property rights.

c. Worker Rights

A June 1998 report by the General Accounting Office (GAO) concluded that major CBI countries have made efforts to improve worker rights in recent years by reforming their labor laws and making efforts to upgrade their labor departments. However, the report noted that many problems remain. This is particularly true in Guatemala, where efforts to address serious worker rights violations have been hampered by an unresponsive and inadequate legal system. International labor organizations continue to file Generalized System of Preferences petitions alleging violations of internationally accepted worker rights in Guatemala. The Administration raised these issues with the previous Guatemalan Government and attaches a high priority to the resolution of these issues by the incoming government.

6. The Caribbean

a. CARICOM

Countries in the Caribbean region include members of the Caribbean Community and Common Market (CARICOM) and the Dominican Republic. Current members of CARICOM are: Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines,

Suriname and Trinidad and Tobago. In theory, CARICOM is a customs union rather than a common market. However, progress toward economic integration and a common external tariff (CET) has been limited.

A meeting of the U.S.-CARICOM Trade and Investment Council was held in September 1999, in Washington. The Trade and Investment Council mechanism has provided a useful opportunity for consultation on issues of mutual interest, such as the EU banana case in the WTO. This meeting, together with other discussions held under the “quick consult” mechanism, has facilitated the development of a joint U.S.-Latin-Caribbean approach to resolve the banana dispute. The meeting also afforded an opportunity to discuss hemispheric and multilateral developments in the FTAA and WTO.

CARICOM countries have played an active role in the FTAA process. At the November 1999 FTAA Summit in Toronto, ministers agreed that Trinidad and Tobago will chair the Negotiating Group on Investment, and the Bahamas will serve as Vice Chair of the Consultative Group on Smaller Economies for the current phase of negotiations.

b. Other Caribbean Countries

Several countries in the region are not members of any of the subregional trade blocs discussed above. The Dominican Republic, the largest beneficiary of the Caribbean Basin Initiative program, does not belong to any regional trade association, but has increased cooperation with both Central America and CARICOM. President Leonel Fernandez envisions a “strategic alliance” of the Caribbean and Central America, aimed at increasing the regions’ leverage in trade talks, with the Dominican Republic as the “bridge” between the two areas.

The Dominican Republic’s record in trade is mixed. On the one hand, the Dominican Republic has taken full advantage of unilateral preferential trade benefits extended by the U.S., attracting

investment in its free trade zones and assembly operations and registering the highest growth rate in the hemisphere. On the other hand, the Dominican Republic has lagged behind other countries in the region in meeting its WTO commitments to provide adequate IPR protection. The Dominican Republic remains on USTR's Special 301 Priority Watch List.

Cuba is not a member of any regional trade agreement, although it is a member of the Association of Caribbean States (ACS), a political and economic organization. Cuba has initiated a dialogue with CARICOM for possible membership, but to date there have been no serious negotiations. Cuba does not participate in the FTAA process or the Summits of the Americas.

c. The Caribbean Basin Economic Recovery Act

The Caribbean Basin Economic Recovery Act (CBERA), also known as the Caribbean Basin Initiative (CBI), was enacted by Congress in 1984 to promote the economic revitalization and export diversification of the Caribbean Basin. The program allows the President to grant unilateral duty-free treatment on eligible articles from beneficiary countries. The CBERA program, originally set to expire in 1995, was made permanent in 1990, with expanded product eligibility. CBERA beneficiaries include: Anguilla, Antigua and Barbuda, the Bahamas, Barbados, Belize, Costa Rica, Dominica, the Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, the Cayman Islands, Montserrat, the Netherlands Antilles, Saint Kitts-Nevis, the Turks and Caicos Islands and the British Virgin Islands.

On October 1, 1999, the Third Report on the Operation of the Caribbean Basin Economic Recovery Act (CBERA) was submitted to Congress. The report is available on USTR's

homepage at www.ustr.gov. The report concludes that the program has had a very positive impact on both U.S. and CBI country exports and has contributed to export diversification in beneficiary countries. The report also finds that the CBI program has helped to improve protection of worker rights and intellectual property in beneficiary countries.

d. Caribbean Basin Trade Enhancement

In the fall of 1999, both the House and Senate took up legislation to enhance CBERA benefits. The Administration also submitted legislation that would expand the coverage of the CBI to products currently excluded by statute. However, House and Senate versions of CBI enhancement vary. The Administration has been working with the supporters of the legislation in both Houses of Congress, and with the affected industries, to find a compromise between the different versions of the legislation. The Administration will continue these efforts and is committed to work with the Congress in 2000 to obtain passage of CBI enhancement.

H. Africa

Overview

As a part of President Clinton's Partnership for Economic Growth and Opportunity in Africa initiative, the Administration has endeavored to develop and implement three central trade policy objectives: (1) strengthening U.S.-Africa economic engagement; (2) integration of sub-Saharan countries into the multilateral trading system; and (3) promoting economic reform and growth. As one element in this initiative USTR established the position of Assistant United States Trade Representative for Africa and the Office of African Affairs in 1998.

Highlights of the achievements of this Administration since 1993 include:

Strengthened U.S.-Africa Engagement

The Administration has worked with Members of Congress in a bi-partisan effort to support enactment of the African Growth and Opportunity Act (AGOA), which would establish a framework for a trade and investment-based approach to promoting economic growth in sub-Saharan Africa. The Act passed both chambers of Congress in 1999 and as of the date of this report was awaiting action by a House-Senate Conference Committee. USTR played a leadership role during the March 1999 U.S.-Africa Ministerial, the largest meeting ever held between American Cabinet Members and African Ministers. As part of the Ministerial, the United States co-chaired with the Organization of African Unity/African Economic Community, the first-ever ministerial Round Table on U.S.-Africa trade cooperation.

In 1999, the United States concluded historic Trade and Investment Framework Agreements with South Africa and Ghana, the first with any countries in sub-Saharan Africa. In addition to formal consultations under TIFAs or other bilateral mechanisms, USTR has conducted extensive trade-related consultations throughout Africa and in Washington with African trade officials.

Fuller African Integration into the Multilateral Trading System

Increased African participation in the global trading system creates greater opportunities and a stronger foundation for economic growth in sub-Saharan Africa. Increased African participation also strengthens the international trading system. USTR has expanded its efforts to engage African countries on WTO issues through increased bilateral and multilateral consultations, new consultative mechanisms, and technical assistance. As a result, the United States and a number of African countries have identified significant areas of common interest in the WTO. One example is the development and tabling of a

joint proposal from the United States, Lesotho, Nigeria, Senegal and Zambia to the WTO on improving trade-related technical assistance.

USTR has worked with other agencies, especially USAID, to increase WTO-related technical assistance to sub-Saharan African countries. USTR and USAID have coordinated WTO-awareness workshops in Zambia (a regional workshop for the Common Market for Eastern and Southern Africa), Cote d'Ivoire, Mali, Senegal, South Africa, and Uganda. During the 1999 WTO Ministerial Conference, USTR and USAID conducted a Technical Assistance Symposium for African trade ministers on WTO-related technical assistance resources and published a comprehensive guide to these resources.

Economic Reform and Growth

Economic reform and growth in Africa benefits the United States and Africa by providing new opportunities for U.S. businesses in sub-Saharan Africa, a market of 640 million people, and by creating stronger and more stable economies that allow African countries to better combat transnational challenges such as disease, poverty, environmental degradation, narcotics trafficking, and terrorism. The African Growth and Opportunity Act would support economic reform in the region by providing incentives for sub-Saharan African countries to adopt more free market-oriented policies.

USTR also has used a number of formal and informal consultations to promote economic reform. For the first time in ten years, in December 1998, the United States concluded a Bilateral Investment Treaty with a sub-Saharan African country, Mozambique. The BIT will protect U.S. investment in Mozambique and ensure a predictable environment for investment guided by market forces. In addition, USTR has been active in the Trade Policy Review Mechanisms that are conducted by the World Trade Organization and has used these reviews as a tool to encourage further trade and investment

liberalization and reform. In the past few years, more than ten African countries have benefitted from these reviews.

In June 1997, USTR enhanced the Generalized System of Preferences Program by adding 1,783 new tariff lines for least developed beneficiary countries (LDBDCs). Of the 39 LDBDCs worldwide, 30 are in sub-Saharan Africa. The enhancement allows these 30 sub-Saharan African countries duty-free access to the U.S. market for products listed in these tariff lines, promoting greater African use of the GSP program, diversification of African exports and growth of the African private sector. In 1999, the United States extended GSP benefits to two additional sub-Saharan African countries, Gabon and Mauritania. African use of the GSP program has increased significantly as a result of these efforts. USTR also has utilized the GSP program to promote regional economic integration by determining (in June 1998) that eligible members of certain regional organizations could combine their value-added contributions to products exported to the United States in order meet GSP rule-of-origin requirements.

Public Outreach

The U.S. Government has been very active in promoting U.S. private and public sector understanding of the U.S.-Africa trade policy and has increased overall American understanding of the opportunities and challenges of trade with Africa. USTR has coordinated five annual reports for the President's submission to Congress on the United States' Comprehensive Trade and Development Policy Toward Sub-Saharan Africa. USTR officials have participated in town hall meetings and have briefed numerous private sector, faith, academic and other NGO groups throughout the country on U.S.-Africa trade policy.

1999 Activities

In 1999, the Administration strengthened both its bilateral and multilateral engagement with the countries of sub-Saharan Africa. The United States' largest trading partners in sub-Saharan Africa remained South Africa and Nigeria. Other major trading partners included: Angola, Gabon, Ghana, and Cote d'Ivoire. In 1999, the U.S. exported \$5.6 billion to sub-Saharan Africa, a decrease of 17 percent, and imported just over \$14 billion, an increase of 7 percent. U.S. exports to sub-Saharan Africa were greater than to all of the former Soviet Union, including Russia. However, with a population of more than 640 million, sub-Saharan Africa's potential as a trading partner is much greater than these figures would indicate. In 1999, a number of African countries, including Nigeria, began to transition to more democratic political systems and more open and market-oriented economies. The Administration plans to support these efforts and the economic reform process in many sub-Saharan African countries by encouraging trade and investment flows between the United States and these countries and by providing appropriate technical assistance to help these countries better participate in the multilateral trading system, including the WTO.

The African Growth and Opportunity Act, currently pending a Conference in the U.S. Congress, would substantially enhance U.S. efforts to support economic reform in sub-Saharan Africa by providing increased access to the U.S. market for reforming countries, establishing a formal U.S.-Africa Trade and Economic Cooperation Forum, and encouraging creation of funds and guarantees to promote trade and investment with sub-Saharan Africa. The Administration continues to support rapid enactment of the AGOA.

1. South Africa

South Africa is the United States' largest trading partner and the largest economy in sub-Saharan

Africa. In 1999, U.S.-South Africa trade totaled \$5.8 billion with U.S. exports of \$2.6 billion – a 29 percent decrease from 1998 – and U.S. imports from South Africa of \$3.2 billion – a 5 percent increase. The decline in trade was due in part to slower growth of the South African economy which was still recovering from the world-wide financial turmoil of 1998.

In February 1999, the United States and South Africa signed a Trade and Investment Framework Agreement (TIFA). TIFAs establish a mechanism for addressing trade and investment issues and for identifying and eliminating or reducing barriers to trade and investment. The inaugural U.S.-South Africa TIFA council meeting was held in July 1999 by video-conference and produced progress on a number of issues including intellectual property rights and WTO cooperation.

Throughout 1999, USTR worked with the Government of South Africa on a number of intellectual property issues, including concerns regarding the protection of patent rights for pharmaceuticals under South Africa's Medicines Act in conjunction with South Africa's efforts to address HIV/AIDS. In September 1999, USTR concluded a bilateral understanding with South Africa under which both Governments reaffirmed their shared objective of addressing South Africa's major health needs, including the treatment of HIV/AIDS, in a manner also consistent with the provisions of the WTO TRIPS Agreement. On December 1, the United States removed South Africa from the Special 301 Watch List. This action was based on South Africa's agreement that it would address health needs in a manner that fully protects intellectual property rights, as well as other steps South Africa has taken and is taking to improve further the protection of intellectual property.

In 1999, South Africa also concluded a number of agreements that may affect U.S.-South Africa relations. South Africa ratified the Southern African Development Community (SADC) Trade Protocol, which is expected to come into force for

participating countries during the first half of 2000. The United States has supported South Africa's and the other members of SADC's (through provision of technical assistance in some cases) efforts to increase regional economic integration. Regional integration offers increased market efficiencies, promotes competitiveness and improved allocation of resources, and creates larger markets that are more attractive to traders and investors.

On October 11, 1999, South Africa and the European Union signed an "Agreement on Trade, Development and Cooperation." Under the agreement, the EU and South Africa agreed to establish a Free Trade Area over a transitional period lasting a maximum of 12 years for South Africa and a maximum of 10 years for the European Union. Trade provisions of the agreement were to have come into force on a provisional basis (pending ratification by all EU members) on January 1, 2000, but a dispute has made it unclear exactly when the agreement was or will be implemented. USTR is reviewing the agreement to determine if and what detrimental effects it may have on U.S. interests and to ensure that it is consistent with WTO provisions.

Promoting increased trade and investment between the United States and South Africa remains a priority and will be a major topic for discussion during future TIFA Council meetings planned for 2000.

2. Nigeria

With the inauguration of a democratically elected President in March 1999, the United States has increased its engagement with the Government of Nigeria. During his November 1999 visit to the United States, Nigerian President Obasanjo expressed his strong commitment to implementing economic reforms in Nigeria and to seeing Nigeria take its place as a leader in the multilateral trading system. In 1999, the United States initiated negotiation of a U.S.-Nigeria TIFA, which was signed on February 16, 2000. The TIFA creates a

mechanism in which trade, investment, intellectual property, and other issues can be addressed and resolved. Nigeria, which is not currently eligible for the U.S. Generalized System of Preferences Program, has indicated its interest in participating in the program.

3. Other African Countries

The Administration has increased its engagement on trade issues with a number of other sub-Saharan African countries including Ghana, Senegal, and Uganda. In February 1999, the United States and Ghana signed a Trade and Investment Framework Agreement. In August 1999, the Administration worked extensively with Senegal's Minister of Commerce, during his visit to the United States, to highlight opportunities for increased U.S.-Senegal trade and areas for U.S.-Senegal cooperation in the WTO. In November 1999, during a visit of Uganda's Deputy Prime Minister/Minister of Trade, USTR began a U.S.-Uganda dialogue on a wide-range of WTO issues. The Administration plans to continue to enhance economic relations with a number of African countries and to work to diversify our trade with Africa.

a. Regional Trade and Investment Framework Agreements

Negotiation of a TIFA with the West African Economic and Monetary Union (WAEMU) began in 1998, and the Administration is hopeful that the TIFA will be concluded in 2000. In addition, the United States is discussing a TIFA with the Southern African Development Community. Regional TIFAs have been effective in other parts of the world as tools to institutionalize dialogue with regional leaders on trade and investment liberalization, regulatory and judicial reforms, intellectual property rights protection, and other measures to enhance trade.

b. GSP

The worldwide GSP program expired on June 30, 1999, but was re-authorized in November 1999 with benefits retroactive to July 1, 1999. Unlike in past years, the GSP program was re-authorized until September 30, 2001, providing greater incentives for importers to use the program because of the added security that the program will exist for the next two years. Implementation of the African Growth and Opportunity Act would further extend GSP benefits to sub-Saharan African countries for either 6 or 9 years (depending on whether the House or Senate version is enacted). The African Growth and Opportunity Act also would expand for qualifying sub-Saharan African countries the list of products given duty-free treatment under the GSP program, to include textiles and apparel and certain other items previously excluded.

In 1999, USTR extended GSP benefits to two additional sub-Saharan African countries, Gabon and Mauritania. USTR also worked with a number of African countries to help them understand how the GSP program works. In addition, during 1999, a number of new countries became eligible to utilize a regional cumulation benefit aimed at promoting regional economic integration and increased cross-border trade and investment. In June 1998, the President determined that eligible members of WAEMU, SADC, and the Tripartite Commission of East African Cooperation (EAC) could combine their value-added contributions to products exported to the United States in order to meet GSP rule-of-origin requirements. To be eligible, SADC and EAC members had to ratify their organization's respective trade protocol. By SADC's January 2000 deadline, ten SADC members had ratified the SADC trade protocol – Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, and Zimbabwe – making them eligible to receive the cumulation benefit. In 1999, all three members of the EAC (Kenya, Tanzania, and Uganda) signed the EAC Treaty making these

countries eligible for cumulation benefits. All eight WAEMU countries (Burkina Faso, Benin, Cote d'Ivoire, Guinea-Bissau, Mali, Niger, Senegal, and Togo) already were eligible for the new GSP cumulation benefit.

c. Enhanced Engagement on WTO Issues

Working with the countries of sub-Saharan Africa to assist them to actively participate in the WTO is a priority for the Administration. Participation in the WTO and the multilateral trading system are essential for promoting sustainable economic growth in Africa. Participation in the WTO includes sub-Saharan African members in a rules-based trading system in which they have an equal voice with all other WTO Members and an ability to influence decision-making. However, African WTO members will be able to benefit fully from the WTO only by understanding all their rights and obligations and by fully implementing their commitments under WTO agreements, commitments which will make their countries more attractive to international commerce and investment.

The Administration has been working with a number of African countries to increase their understanding of the issues before the WTO and to provide technical assistance to enable them to implement their WTO commitments and to enjoy fully the benefits of the international trading system. In October 1999, the United States with four African countries (Lesotho, Nigeria, Senegal, and Zambia) tabled a WTO proposal on technical assistance. Among other initiatives, USTR and USAID sponsored a Symposium on WTO-Related Technical Assistance Resources during the 1999 WTO Ministerial Conference. USTR and USAID also coordinated WTO-awareness workshops at the regional level in Zambia (co-sponsored by the Common Market for Eastern and Southern Africa (COMESA) and at the national level in Cote d'Ivoire, Mali, Senegal, South Africa, and Uganda.

